IN THE
SUPREME COURT OF THE UNITED STATES

No. 72-6650

RICHARD BROWN,

Petitioner,

-vs-

PEOPLE OF THE STATE OF
ILLINOIS,

Respondent.

PETITION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, RICHARD BROWN, by his Counsel the Public Defender of Cook County, Illinois, by JOHN M. KALNINS, Assistant Public Defender asks leave to file a Petition for a Writ of Certiorari to the Supreme Court of Illinois, without pre-payment of costs and to proceed in forma pauperis.

Counsel for Petitioner states on information and belief that Petitioner is indigent and without funds to pay costs or fees incident to the filing this Petition for a Writ of Certiorari to the Supreme Court of Illinois.

Petitioner's own affidavit of indigency will be forwarded to this Court immediately upon receipt thereof.

JAMES J. DOHERTY
Public Defender of Cook County

By _____

JOHN M. KALNINS
Assistant Public Defender
407 Civic Center
Chicago, Illinois 60602
443-6350

Counsel for Petitioner.

SUBSCRIBED and SWORN TO before me

this 31 day of October, A.D., 1972.

_____
Notary Public

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D, 1973

No. 73-6650

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS.

JAMES J. DOHERTY
Public Defender of Cook County,
Illinois, Chicago, Illinois

By: JOHN M. KALNINS,
ROBERT P. ISAACSON
Assistant Public Defenders,
407 Civic Center,
Chicago, Illinois 60602
(312) 443-6350,

Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D., 1973

No.

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF ILLINOIS.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered on January 31, 1974 affirming petitioner's conviction of the offense of murder.

OPINION BELOW

Petitioner was found guilty by a jury in the Circuit Court of Cook County and sentenced to serve not less than 15 nor more than 30 years in the penitentiary. Petitioner's conviction was affirmed on a direct appeal by the Supreme Court of Illinois on January 31, 1974 in an opinion published at 56 Ill. 2d 312 (1974). No petition for rehearing was filed.

JURISDICTION

The jursidiction of this Court is invoked pursuant to 28 U.S.C. 1257 (3). Petitioner's conviction was affirmed by the Illinois Supreme Court on January 31, 1974, and this petition is timely filed within 90 days thereafter.

QUESTION PRESENTED FOR REVIEW

Does the giving of Miranda warnings, without more, render admissible under Wong Sun v. United States, 371 U.S. 471, a statement procured immediately following an unlawful arrest for questioning?

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States:

"The right of the people to be secure in their persons, houses,...against unreasonable searches and seizures shall not be violated . . ."

Fifth Amendment to the Constitution of the United States:

"No person . . . shall be compelled in a criminal case to be a witness against himself . . ."

Fourteenth Amendment to the Constitution of the United States:

" . . .nor shall any State deprive any person of life, liberty or property without due process of law . . ."

STATEMENT OF THE CASE

Petitioner was convicted of murder on the basis of a statement which was introduced at his jury trial over petitioner's objection. This petition draws into question the admissibility of the statement in light of Wong Sun v. United States, (1963) 371 U.S. 471.

On direct appeal from the trial court to the Supreme Court of Illinois the Court found that Petitioner's arrest and detention were unlawful in that it was without probable cause or warrant of any kind. The conviction was affirmed on the theory that the giving of Miranda warnings, without regard to other circumstances, served to break the causal connection between the illegal arrest and the giving of the statements.

Because the opinion of the Illinois Supreme Court chose to disregard the totality of circumstances of the unlawful arrest, we set them out below.

CIRCUMSTANCES OF THE UNLAWFUL ARREST FOR QUESTIONING AND THE PROCUREMENT OF STATEMENTS

Police officers of the City of Chicago learned of the homicide of Roger Corpus on May 6, 1968. On May 13, 1968 several officers went to Petitioner's apartment at about 4:30 or 5:00 p.m. They did not have an arrest or search warrant, and the Illinois Supreme Court found that they did not have probable cause to arrest Petitioner. Not finding the Petitioner or anyone else to be home, the officers nevertheless entered Petitioner's apartment, conducted a search, (R. 462) and concealed themselves therein. They waited inside until about 7:45 p.m., at which time Petitioner returned home, and was arrested at gunpoint, placed against a wall, searched, and handcuffed with his hands behind his back. (R. 463) Petitioner was then transported to the Maxwell Street police station and placed in an interrogation room shortly after 8:00 p.m.

One of the officers testified that Petitioner was "brought in for investigation" (R. 19) and could not recall that the name of the deceased was mentioned. (R. 73) The other officer testified that Petitioner was "arrested for questioning," and that once police had him, they intended to question Petitioner. (R. 468)

The Illinois Supreme Court found that Petitioner was orally advised of his rights under Miranda. His interrogators told Petitioner that they knew that Petitioner had been involved in a shooting incident in a pool room about a week before the homicide, that a bullet recovered from the ceiling of the pool room matched bullets found in the body of the deceased, and that Petitioner's fingerprints were found on a bottle in the apartment of the deceased.(R. 106) At trial the State stipulated that the bullet from the ceiling of the pool room could not be compared with the bullets in the body of the deceased, and that no fingerprints other than those of the deceased were found in the deceased's apartment. (R. 542,543)

At this time Petitioner said that one Jimmie Claggett had shot the deceased. Petitioner testified that at this time he started to give a statement, that he was read Miranda rights from a card, and was told that he would not need a lawyer for he would not be charged. (R. 112) The interrogator said that Petitioner

would not be charged, and that all they wanted from him was a statement. (R. 112) Petitioner was also told during this statement that he would be a State's witness, and that there would be a deal made between the State's Attorney and the Public Defender. (R. 120) Although one of the officers testified that there were no promises of leniency made, he conceded that there was talk of turning State's evidence (R. 42),and that Petitioner was told that if he helped find Claggett, this would be taken into consideration. (R. 452)

Within the first hour of his unlawful detention, between 8:45 and 9:00 p.m. Petitioner signed a 2-page statement, typed up by police. This statement contained no Miranda advisements, and probably for this reason was not introduced at his trial. In the statement Petitioner said that he had met Claggett at the apartment of the deceased, that Claggett had shot the deceased, that Petitioner tried unsuccessfully to prevent the shooting, and that Claggett ordered Petitioner at gunpoint to tie up the deceased, which he had done.

At 9:30 p.m. the two officers took Petitioner to look for Claggett. After an hour of driving around without success, the officers took Petitioner to central police headquarters to look for a picture of Claggett. Although the officers knew that there was a night bond court open at that hour at central police headquarters, they did nothing to bring Petitioner before a magistrate.

They left central police headquarters at 11:00 p.m. and returned to the area where they thought Claggett could be found. On this occasion, Petitioner pointed out Claggett on the street, and he was taken into custody. They then returned to the Maxwell Street Station, arriving at 12:20 a.m., and Petitioner was placed in the same interrogation room.

At 2:00 a.m. an Assistant State's Attorney arrived, and a second statement was taken from Petitioner in the presence of a court reporter. This statement contained Miranda warnings, but when it was transcribed, the Petitioner refused to sign it. The questioning ceased at 3:00 a.m. This second statement was introduced at Petitioner's trial.

Petitioner was first allowed to make a phone call at 4:00 a.m., at which time he called his mother. No attorney was provided for Petitioner until he went before a magistrate at about 9:30 that same morning, about 14 hours after his unlawful arrest.

REASON FOR GRANTING THE WRIT

THE RULE OF PER SE ATTENUATION FASHIONED BY THE ILLINOIS SUPREME COURT DISREGARDS THE VINDICATION OF PETITIONER'S 4TH AND 14TH AMENDMENT RIGHTS AND MAKES THEM NON-EXISTENT.

Petitioner's conviction was upheld by the Illinois Supreme Court. Petitioner contended that the statements he gave police after an illegal arrest should have been suppressed as the fruits of the illegality under Wong Sun v. United States, (1963) 371 U.S. 471. In rejecting this contention, the Illinois Supreme Court reasoned that the mere giving of the Miranda warnings was sufficient to "purge the primary taint of the unlawful invasion." In order to reach this issue, the Illinois Supreme Court held there was no probable case to arrest petitioner.

In Wong Sun, federal agents illegally entered defendant Toy's living quarters and arrested him. Toy made statements implicating himself and Johnny Yee. Agents arrested Yee and seized narcotics which he said were obtained from Toy and Wong Sun. All three were arraigned and released on their own recognizance. Several days later, they returned voluntarily and made written statements. This Court excluded the statements made by Toy in his bedroom as the fruits of the official illegality and the later statements on other grounds. This Court then admitted Sun's statement since the connection between it and the illegal arrest of Sun had "become so attenated as to dissipate the taint." at 371 U.S. 491

Petitioner urges that in failing to overturn the trial court's refusal to suppress the statement, the Illinois Supreme Court ignored the violation of his Fourth and Fourteenth Amendment rights as articulated in Wong Sun. Since the Illinois Supreme Court pointed to no factor other than the giving of the Miranda warnings as constituting "attenuation", the opinion establishes a "per se attenuation" rule in cases in which Miranda warnings are given. This "per-se attenuation" rule in choosing to focus solely on whether the giving of a statement complies with the Fifth Amendment, necessarily ignores the Fourth Amendment aspects of Wong Sun.

The United States Supreme Court stated in Wong Sun, 371 U.S. 471, 484:

> "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, Boyd v. United States, 116 U.S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. Weeks v. United States, 232 U.S. 383.

The Court then reasoned that the Fourth Amendment which compels suppression of physical evidence also compels suppression of oral statements:

> "Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion. See Nueslein v. District of Columbia, 115 F. 2d 690. Nor do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence. Either in terms of deterring lawless conduct by federal officers, Rea v. United States, 350 U.S. 214, or of closing the doors of the federal courts to any use of evidence unconstitutionally obtained, Elkins v. United States, 364 U.S. 206, the danger in relaxing the exclusionary rules in the case of verbal evidence would seem too great to warrant introducing such a distinction." at 371 U.S. 485-86. (Footnote omitted)

In Traub v. Connecticut, (1963) 374 U.S. 493, this Court, in a per curiam opinion, vacated the judgment of the Connecticut Supreme Court and remanded the case for further consideration in light of Wong Sun and Ker v. California, 374 U.S. 23.

First, Traub applies Wong Sun to state proceedings. Second, since the Connecticut Supreme Court had already held that the confessions were voluntary, this Court's vacating and remanding can only mean one thing: that apart from the Fifth Amendment Privilege Against Self-Incrimination, the Fourth Amendment (applicable to the states through the Fourteenth Amendment) provides protection to an individual making a confession after an illegal arrest.

In Morales v. New York, (1969) 396 U.S. 102,this Court considered the same issue petitioner is now raising. The New York Court of Appeals affirmed Morales' conviction, rejecting his claim for relief under Wong Sun, not on the ground that there was probable cause to arrest but rather on the ground that the police conduct involved was reasonable under the circumstances of the case. This Court first held that the confessions were voluntary. Expressing no opinion as to the legality of custodial questioning on less than probable cause for a full-fledged arrest, the Court remanded for a hearing:

> "Given an opportunity to develop in an evidentiary hearing the circumstances leading to the detention of Morales and his confessions, the State may be able to show that there was probable cause for an arrest or that Morales' confrontation with the police was voluntarily undertaken by him or that the confessions were not the product of illegal detention." at 396 U.S. 105

Since this Court had already held the confessions to be voluntary, the decision to vacate and remand can mean only one thing: That apart from the Fifth Amendment Privilege Against Self-Incrimination, the Fourth Amendment provides protection to an individual giving a confession after an illegal arrest.

In Alderman v. United States, (1968) 394 U.S. 165, this Court vacated the conviction and remanded to the District Court to determine if the government violated the Fourth Amendment rights of Alderman by engaging in electronic surveillance. In that opinion, Mr. Justice White stated, at 394 U.S. 178:

> "In Wong Sun, the words spoken by Blackie Toy when the police illegally entered his house were not usable against him because they were the fruits of a physical invasion of his premises which violated the Fourth Amendment."

The Fifth Circuit has consistently adhered to the view that Wong Sun is a Fourth Amendment case. In Rogers v. United States, 330 F. 2d 535 (5th Cir. 1964), cert. denied 379 U.S. 916,the court never reached the issue presented in the case at bar, finding that probable cause for the arrest existed. However, the court stated at 330 F. 2d 541;

> "There is no doubt that in Wong Sun the Supreme Court is no longer speaking the language of coerced confessions and the Fifth Amendment."

Then in Collins v. Beto, 348 F. 2d 823 (5th Cir. 1965), (a pre-Miranda case) in reversing the conviction for murder, Judges Tuttle and Friendly both held that the confession was involuntary. Although Judge Friendly chose not to reach the Wong Sun issue, Judge Tuttle concluded that without regard to the involuntariness of the confession, the confession should be suppressed as the fruit of the illegal arrest. (348 F. 2d at 827) In referring to Wong Sun, Judge Tuttle stated at 348 F. 2d 823, 827 that:

> "There the Supreme Court based its application of the exclusionary rule on the need for deterring unlawful police conduct. 371 U.S. at 486, 83 S. Ct. 407. The theory of deterrence operates 'only if an excludable piece of evidence is the target of police activity.' Comment, 69 Yale L. J. 432, 436, n. 12."(footnote omitted)

Petitioner urges that since his statements were the target of the Chicago policeman's activities, they should have been suppressed. According to one officer, Petitioner was "brought in for investigation." (R. 19) According to the other arresting officer, Petitioner was "arrested for questioning." (R. 65) In any event, the Illinois Supreme Court's "per se attenuation" rule totally ignores the Fourth Amendment considerations of Wong Sun.

In United States v. Kilgen, 431 F. 2d 627 (5th Cir. 1970), the Fifth Circuit held that a voluntary confession given after the full Miranda warnings should have been suppressed as the fruits of an illegal arrest.* In applying the Fourth Amendment rationale of Wong Sun, the Court stated:

> "Here there was no technical violation. There was an arrest in violation of appellant's constitutional rights. The only intervening occurrence present here was the warning they received by the postal authority of their constitutional rights. This, we do not think is sufficient to break the chain of events that led directly from the illegal arrests to the giving of the confession to the postal authorities while appellant was in custody under the illegal restraint." at 431 F. 2d 632.

After granting the government's motion for rehearing, the Fifth Circuit later affirmed Kilgen's conviction in United States v. Kilgen, 445 F. 2d 287 (5th Cir. 1971) The court held that since the police officers had a good faith belief in the validity of the arrest, the confession was properly admitted. Referring to the fact that both the Supreme Court of Florida and the federal district had upheld the constitutionality of the statute and that there was no hint of any abusive police conduct, the court stated:

---

*The arrest in Kilgen was illegal because it was pursuant to a statute found to be unconstitutional by the Fifth Circuit.

> "In short, this is a clear case of police officers who, with the utmost regard for the rights of the defendant, carried out their sworn duty to make an arrest and obtain evidence under the law as it then existed, at 445 F. 2d 289.

Petitioner urges that the Chicago police officers did not act in good faith in arresting him. To the contrary, they acted in total disregard of his constitutional rights. According to one officer, Petitioner was "brought in for investigation." (R. 19) According to the other arresting officer, Petitioner was "arrested for questioning." (R. 65) Under the Rogers, Collins, and Kilgen line of cases, his statements to police should have been suppressed. For other cases excluding confessions as the fruits of illegal arrests, see United States v. Sims, 231 F. Supp. 251 (Dist. Md. 1964); and State v. Mercurio, (1964) 194 A. 2d 574.

By failing to suppress Petitioner's statement to the police, the Illinois Supreme Court totally ignored the violation of his Fourth and Fourteenth Amendments rights and has sanctioned the unconstitutional, investigative arrest. According to the police officers', testimony, the purpose of the unconstitutional arrest was to procure a confession from Petitioner. Therefore, the application of the Fourth (and Fourteenth) Amendment considerations in Wong Sun is especially appropriate. In the alternative, the Illinois Supreme Court's establishing a "per se attenuation" rule deprived Petitioner the opportunity to show that his confession was the fruit of official illegality.

CONCLUSION

For the reasons urged herein, it is respectfully requested that a writ of certiorari issue to review and reverse the judgment of the Supreme Court of Illinois entered herein.

Respectfully submitted,

JAMES J. DOHERTY
Public Defender of Cook County

By Robert P. Isaacson
ROBERT P. ISAACSON
Assistant Public Defender

April 29, 1974

Docket No. 43319 -Agenda 1 November, 1973.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,
v. RICHARD BROWN, Appellant.

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Richard Brown, was found guilty of murder by a jury in the circuit court of Cook County and sentenced to not less than 15 nor more than 30 years in the Illinois State Penitentiary.

Defendant and Jimmie Claggett were charged in a four-count indictment with the murder of Roger O. Corpus. At approximately 5:00 P.M. on May 6, 1968, Corpus's body, his ankles bound with white electric cords, was discovered lying on the floor of the living room in his apartment. The door to the apartment was open, lights were on, and music was playing, presumably on a radio. The deceased's wallet, credit cards and much of his clothing were missing.

As grounds for reversal defendant contends first that the trial court erred in denying his motion to suppress two statements, one made to the arresting police officers, and the other to an assistant State's Attorney. He argues that his arrest was unlawful in that it was made in his home, at night, without a warrant, after forcible entry by the police and that there were no exigent circumstances shown which justified the failure to seek a warrant for his arrest. He contends further that the statements taken from him following his arrest were obtained prior to his being taken before a magistrate, that they are "the products of the unlawful custody" and should have been suppressed and excluded from introduction into evidence.

The People contend that at the time of defendant's apprehension the arresting officers had reasonable grounds to believe that he was implicated in the murder and that the arrest without a warrant was, therefore, lawful.

The testimony adduced at the hearing on the motion to suppress shows that on May 13, a week after the murder, two detectives went to defendant's apartment, that one of them concealed himself within the apartment and the other concealed himself outside the apartment. The entry into the apartment was accomplished in defendant's absence and without a warrant. After they had waited for approximately three hours defendant appeared, and Detective Lenz greeted him with drawn revolver and placed him under arrest.

In support of their contention that the police officers had probable cause for defendant's arrest, the People rely principally on the testimony of the deceased's sister, Constance DeLoach. The record, however, shows that Mrs. DeLoach testified, not at the hearing on the motion to suppress, but at the trial, and there is no evidence that the police, at the time of the arrest, were possessed of knowledge of the matters to which she testified. The deceased's brother testified that he had given defendant's

name to the police on May 7, but made no suggestion that defendant was responsible for the death because "nobody asked." Later, apparently on May 9, the police were told that on the day of the murder defendant had been seen in the building where the deceased lived.

Upon review of the record, we conclude that the testimony fails to show that at the time of his apprehension there was probable cause for defendant's arrest, that his arrest was, therefore, unlawful, and we consider next the question whether the statements were the product of the illegal arrest and, therefore, improperly admitted into evidence.

The People contend that even assuming that defendant's arrest was illegal, his statements were voluntarily made after he was fully and properly advised of his right to remain silent and of his right to have an attorney appointed to represent him and to have him present during questioning, and that the giving of the *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436) served to break the causal chain so as to sufficiently attenuate and dissipate the taint of the unlawful arrest. (*Wong Sun v. United States*, 371 U.S. 471.) They argue that his statements did not result from his arrest but rather from the defendant's realization that, even from the facts already known to police, he was implicated in the killing and that he wanted it known that he was merely a bystander and that Claggett was the actual killer.

The testimony adduced at the hearing on the motion to suppress shows that following his arrest defendant was taken to an interrogation room at the Maxwell Street station. Officer William Lenz testified that defendant was advised of his constitutional rights and stated that he understood them. Officers Lenz and William Nolan "had a conversation with" defendant relative to the slaying of Corpus after which defendant agreed to give them a statement. A two-page statement was taken and Officer Lenz testified that the statement "bears the signature of Richard Brown." This statement, however, is not included in the record and no issue is raised concerning it in this appeal. After this statement was taken the officers took the defendant to the Madison and Homan area in an effort to find Claggett. They did not find Claggett and went to the identification section of the central police station to obtain a photograph of him. They returned to the area where they had sought Claggett and found and arrested him. Following a brief conversation with Claggett the police officers talked briefly with defendant and then called an assistant State's Attorney. The assistant State's Attorney arrived at 2:00 A.M. and talked with defendant for approximately 25 minutes. During this period a court reporter arrived and the assistant State's Attorney took a question-and-answer statement which was transcribed, but when it was presented to defendant at approximately 4:00 A.M. he refused to sign it. Over objection the circuit court permitted the statement to be read to the jury and it was then, again over objection, offered and admitted into evidence. Contained in this statement are explicit *Miranda* warnings given the defendant by the assistant State's Attorney and defendant's responses indicating that he understood them. The second statement which defendant contends was erroneously admitted was introduced into evidence in the testimony of police officer Nolan who related to the jury what was told him by defendant during interrogation which preceded the taking of the question-and-answer statement. Both Officers Lenz and Nolan testified that defendant had been advised of his constitutional rights.

From our examination of the record, in the light of the circumstances shown by the testimony, we conclude that the giving of the *Miranda* warnings, in the first instance by the police officer and in the second by the assistant State's Attorney, served to break the causal connection between the illegal arrest and the giving of the statements, and that defendant's act in making the statements was "sufficiently an act of free will to purge the primary taint of the unlawful invasion." (*Wong Sun v. United States*, 371 U.S. 471, at 486.) We hold, therefore, that the circuit court did not err in admitting the statements into evidence.

Defendant contends next that even if the statements were properly admitted into evidence, they were exculpatory and he was not proved guilty of murder beyond a reasonable doubt. In the statements defendant admitted that he was present in the deceased's apartment, that at Claggett's direction he tied the deceased's hands and feet and although he stated Claggett fired the fatal shots, he had sold him the pistol earlier that evening. The evidence is clearly sufficient to sustain the conviction. *People v. Nowak*, 45 Ill.2d 158.

Defendant contends next that the trial court improperly admitted evidence of an unrelated criminal offense. The evidence of which he complains was contained in his statement and was in explanation of why he had sold the gun to Claggett. This was admitted in the course of proving what defendant had said to the police and what he had told the assistant State's Attorney, and under the circumstances shown its admission into evidence was not error.

Finally defendant complains of the court's refusal to give a tendered instruction on circumstantial evidence (IPI Criminal No. 3.02). The People tendered, and the court gave, an instruction in the form of IPI Criminal No. 3.02 but without the second paragraph. Obviously the proof of guilt was, in part, defendant's own statements, and with direct evidence of his participation in the crime, the trial court correctly refused the tendered instruction.

In the absence of prejudicial error, the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6650

RICHARD BROWN, PETITIONER

v.

STATE OF ILLINOIS, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR CERTIORARI FILED MAY 1, 1974
CERTIORARI GRANTED OCTOBER 21, 1974

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A

RELEVANT DOCKET ENTRIES

May 13, 1968	Date of Arrest
July 2, 1968	Date of Filing of Motion to Suppress
Dec. 11, 1968	Date of Hearing on Motion to Suppress
Dec. 11, 1968	Date of Denial of Motion to Suppress
Jan. 19, 1970	Date of Conviction
Jan. 21, 1971	Date of Notice of Appeal
Jan. 31, 1974	Date of Supreme Court of Illinois Opinion
May 1, 1974	Date of Filing of Petition for Writ of Certiorari
Oct. 21, 1974	Date of Granting Writ of Certiori

B In the Circuit Court of Cook County, County Department—Criminal Division

Ind. No. 68–2275

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

RICHARD BROWN

Defendant's motion to suppress alleged confession, filed July 2, 1968:

Now comes the defendant, Richard Brown, by and through his attorney, Anthony Pacelli, and respectfully states as follows:

1. That he is the defendant in the above entitled cause which is now pending before this Honorable Court for trial. That he has entered a plea of not guilty to each count of the indictment herein.

2. That he is a citizen of the United States of America.

3. That on or about the 13th day of May, 1968, at or about the hour of 7:45 P.M. at or near the vicinity
C of 4837 West End Avenue. He was arrested by police officers of the City of Chicago. That said arrest was without his consent and without warrant or process of law and the said police officers did not have reasonable grounds believing that he had committed any criminal offense and he had not committed any crime in their presence.

4. Following his arrest he was taken to a police station commonly referred to as area 4 homicide, wherein he was from time to time incarcerated in a cell, intermittently questioned and kept awake by various police officers for the avowed purpose of forcing him to give evidence against himself concerning the death of one Roger Corpus. That during this period of time the defendant was threatened with bodily harm, promised immunity, promised leniency and otherwise harrassed and abused by those who held him in custody, until he could no longer bear the constant duress and becoming fearful of his physical well-being and in order to secure relief from the foregoing he was forced against his will to make a statement and al-

leged confession to said homicide, portions of which were stenographically recorded.

5. That said party was not appraised of any constitutional rights nor was the defendant appraised of his right to remain silent pursuant to Chapter 38, Section 103–2, sub-paragraph (a); further defendant was not informed of his right to communicate with an attorney pursuant to Chapter 38, Section 103–3, subparagraph (a); further that defendant was not permitted his right to discuss with an attorney pursuant to Chapter 38, Section 103–4.

D 6. Section 10 of Article II of the Constitution of the State of Illinois provides that no person shall be compelled in any criminal case to give evidence against himself. The Fifth Amendment to the Constitution of the United States likewise. The Fourteenth Amendment to the Constitution of the United States provides that no state shall deprive any person of his life or liberty without due process of law. Wholly disregarding these constitutional provisions, the police officers having defendant in custody compelled him to give evidence and alleged incriminatory statements against himself for the purpose of securing evidence, admissions and confessions upon which defendant might or could be convicted. Defendant is informed and believes and upon such information states the fact to be that all of the alleged confessions or admissions so unlawfully secured have been placed with and turned over to the State's Attorney of Cook County, Illinois, and will be used against defendant in the trial of this cause unless suppressed by order of this court.

7. Paragraph 109–1 of the Illinois Code of Criminal Procedure provides that:

> (a) A person arrested without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge in that county, and a charge shall be filed. A person arrested on a warrant shall be taken without unnecessary delay before the judge who issued the warrant or if he is absent or unable to act before the nearest or most accessible judge in the same county.

Wholly disregarding the provisions of said statute, the defendant as held without warrant or process and was

E never taken before a judge, court or magistrate in compliance with the law, until the said police had unlawfully forced defendant to give an alleged admission and confession

and statement against himself. Defendant was not taken before a judge, court or magistrate until the morning of May 14, 1968. The several judges, courts and magistrates of Cook County, Illinois and of the City of Chicago and State of Illinois were all open and available throughout the day of May 14, 1968, but the persons and officers who had arrested the defendant without warrant intentionally and wilfully failed to take the defendant before any of said judges, courts or magistrates.

8. All of the actions, proceedings and conduct of the said persons and officers relating to the arrest, confinement, questioning, interrogation, threatening, beating, etc. as hereinbefore alleged were and are contrary to and in violation of the rights guaranteed defendant by Sections 103–2, Section 103–3 and Section 103–4.

9. That the defendant herein can substantiate the aforementioned with witnesses who were present following his arrest and at the police station at the time immediately before, during and after said alleged confession was taken.

10. Furthermore, the defendant contends that these allegations can be further supported by the testimony of the public defender, assistant to the courtroom of the Honorable Daniel J. Ryan, who was present at the time when the State's Attorney's office of Cook County attempted to further compound this injustice regarding the alleged confession and only at that time as the defendant availed of council to protect his constitutional right.

F Wherefore, defendant prays that an order be entered declaring unlawful the arrest, detention, interrogation, questioning, beating and holding of defendant as hereinabove alleged, declaring unlawful the forcing of defendant to give evidence against himself, suppressing all evidence, confessions, admissions or statements allegedly taken and obtained from defendant as a result of the foregoing and suppressing any testimony or information from any of the foregoing.

Respectfully submitted,

(signed) RICHARD BROWN

Notice of Appeal to the Illinois Supreme Court filed on January 21, 1970:

1–3 (December 11, 1968, Pre-Trial Proceedings on the Motion to Suppress before the Honorable L. Sheldon Brown).

WILLIAM LENZ, called as a witness on behalf of the Respondent, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. CUSICK.

Q. State your name, officer.

A. William Lenz, L-e-n-z.

Q. What is your employment?

A. Police Department, City of Chicago.

Q. How long have you been on the force?

A. Fourteen years.

4 Q. How many years a detective?

A. I have been a detective since 1956.

Q. Calling your attention—twelve years?

A. Yes, sir.

Q. Calling your attention to May 13th, 1968, at approximately 7:45 P.M. did you have occasion to arrest one Richard Brown?

A. Yes, sir, I did.

Q. Recall where you arrested him?

A. In the 3800 block of West West End Avenue.

Q. Who were you with at the time?

A. I was with Detective William Nolan.

Q. Was the defendant taken into custody at that point?

A. Yes, sir, he was.

Q. Was he transported to a police station?

A. He was.

Q. By what means?

A. By police vehicle, our squad car.

Q. What station was he taken to?

A. Area 4, Homicide, the Maxwell Street Station.

Q. Located at what address?

A. 943 West Maxwell Street.

Q. At the time you first saw the defendant, what was

5 his general physical condition as it appeared to you?

A. It was good.

Q. You noticed nothing on him out of the ordinary?

A. No, sir, he was dressed in casual clothes. Neat as I recall, a green sport shirt and green slacks.

Q. The defendant we are referring to, Richard Brown, do you see him in court today?

A. Yes.

Q. Point him out, please.

A. The gentleman sitting next to the counsel at the table.

Q. Striped shirt?

A. I would say striped gray shirt with white stripes.

Q. What time did you arrive at the station? If you recall?

A. It took us approximately 20 minutes. We would arrive at the station shortly after—

Q. Was the defendant brought to a particular area or room in the station?

A. Yes, he was.

Q. Which one was that?

A. This would be what we refer to as the central inter-

6 rogation room, Room 206, on the floor at 943 West Maxwell.

Q. Who brought him to that particular room?

A. Both myself and Detective William Nolan.

Q. Did you have a conversation with the defendant at that time?

A. Yes, sir, I did.

Q. Were any warnings issued to the defendant?

Mr. HOWARD. Objection.

The COURT. What is your objection?

Mr. HOWARD. The objection, Judge, is to the words or word "warnings."

The COURT. Overrule the objection providing it becomes specific.

Mr. CUSICK. Q. Were any so-called Constitutional warnings issued to the defendant at this point?

The WITNESS. A. Yes, sir, they were.

Q. Will you state what their nature was?

A. Yes, sir. I warned the defendant, we first informed him again of why he was under arrest. I then informed him that he had a right to remain silent. Asked him if he understood and he indicated that he did. I informed him that he had a right to have an attorney present at the time that he was being questioned or any time thereafter, and asked him if he under-

7 stood this warning. He informed me he did. I then asked him if he wished to have an attorney present at this time, and he indicated that he did not. I then informed him that anything he might say or write could and would be used against him at a future date. He informed me that he understood this also.

Q. He answered to that effect?

A. That is correct, sir.

Q. Who was present when these warnings were given besides you and the defendant?

A. Myself and Detective William Nolan.

Q. These warnings were given in what particular room again?

A. Room 206, which would be the center interrogation room.

Q. After this preliminary questioning with regard to warnings what happened next?

A. We had a conversation with Mr. Brown relative to the slaying of Mr. Corpus. After having this conversation he agreed to give us a written statement. A typewriter was brought into the room and a written statement was obtained from Mr. Brown.

Q. Who did the typing of this particular statement?

A. I did the typing, sir.

8 Q. Who was present during the typing of this statement?

A. Detective William Nolan.

Q. Was this typed, statement typed as the questions were asked and answered?

A. That is correct, sir. The question would be asked, typed, and then the answer would be typed in.

Mr. CUSICK. I would like this marked Respondent's Exhibit No. 1.

(Thereupon said exhibit was marked Respondent's Exhibit No. 1 for identification.)

Mr. CUSICK. Care to examine this, Mr. Howard?

Mr. HOWARD. I have seen it.

Mr. CUSICK. Q. Officer, I show you Respondent's Exhibit No. 1 and ask you if you can identify that?

The WITNESS. A. Yes, sir, I can.

Q. When and where did you first see it?

A. This statement was taken on the date of the arrest at approximately 8:40 or 8:40 P.M., in room 206, 943 West Maxwell Street.

Q. This is the statement you referred to just previously in your testimony?

A. That is correct, sir.

9 Q. Who was present once again during this particular statement?

A. Present during the taking of this statement was the accused, Mr. Brown, myself, and Detective William Nolan.

Q. Is there a signature affixed on the bottom of this statement?

A. Yes, sir, there is.

Q. Whose signature is that?

A. It bears the signature of Richard Brown.

Q. How many pages in the statement?

A. Two pages.

Q. Does this particular typewritten document truly and accurately portray the questions and answers that were asked on this particular day in question?

A. Yes, sir, it does.

Q. Now, what time was this statement completed?

A. This statement took us approximately 25 to 30 minutes to complete.

Q. Upon the completion of the statement, what happened next?

Q. Mr. Brown agreed to accompany Detective Nolan and myself to the area of Madison and Homan, Madison and St. Louis, that general area where he informed us another

10 subject being sought could be located.

Q. Approximately what time did you leave the Maxwell station?

A. As best I recall it would have been 9:30 or shortly after 9:30 P.M.

Q. What was the defendant's physical condition when he left the station at this point?

A. Good.

Q. Had he changed from when you first arrested him?

A. No, sir, he had not.

Q. Did he make any complaint of being harassed or under any type of harassment?

A. No, sir, he did not.

Q. When you left what time did you reach the Madison and Homan area?

A. Approximately 9:45.

Q. How long were you out on the street in this particular area?

A. We drove around in the immediate area and stopped at various taverns on Madison Street. We also toured the area of Monroe Street, St. Louis, Central Park. We would get out of the car with the accused and he would look into various businesses trying to locate the other subject.

11 Q. Did you eventually leave this area?

A. Yes, sir, we did.

Q. Were you successful in locating Mr. Claggett at this point?
A. No sir.
Q. Where did you go when you left the area?
A. We went to the police central building at 1121 South State to the identification section.
Q. Your purpose in going there was what?
A. An attempt to obtain a photograph of Mr. Claggett.
Q. How long were you inside the building?
A. I would say approximately twenty, twenty-five minutes.
Q. Once again it was you, the defendant and Detective Nolan?
A. That is correct.
Q. What time did you leave the building approximately?
A. As best as I can recall we left the police building it would be, oh, about five minutes to 11:00 or 11:00 o'clock P.M.
Q. Where did you go then?
A. We proceeded back to the area of Homan and Madison, Madison and St. Louis.
12 Q. What happened next?
A. We again revisited the same businesses we had originally attempted to locate Mr. Claggett. We were unsuccessful. Got back into the car and were proceeding south on St. Louis Avenue. As we came to the intersection of St. Louis and Monroe Mr. Brown indicated, there were three people crossing in front of our vehicle walking from the west side to the east side of the Street on Monroe, he indicated one of the three persons as being Mr. Claggett, the man we were seeking.
Q. Did you arrest Mr. Claggett?
A. Yes, sir, we did.
Q. Did you go back to the station at this point?
A. We did.
Q. What time did you and the defendant Brown and William Nolan arrive back inside the station?
A. Approximately 12:15, 12:20 A.M.
Q. During the entire period of time from the arrest up until now had the defendant complained of any abuse of any kind?
A. No, sir, he did not.
Q. What was his physical condition when you reached the station?
A. His physical condition was good.
13 Q. Had he had anything to eat or drink during the interim period?

A. There was some coffee, as I recall, we had some coffee.
Q. Did he have some?
A. Yes, sir, he did.
Q. Where did you have the coffee?
A. This would be in the station.
Q. When you arrived in the station, about 12:20 in the morning or 12:20 A.M. would that have been?
A. That is correct, sir.
Q. Where was the defendant put or kept at this point?
A. He was placed back in the same room, Room 206.
Q. Was he guarded there by anyone?
A. The door was closed. The room that he was in the door was closed and the windows are barred.
Q. Was he in there alone?
A. He was alone.
Q. Was he visited by anyone from 12:20 A.M. until 2:00 o'clock in the morning?
A. No one other than myself, Detective Nolan.
Q. Were you in the outer room during this period?
A. Yes, sir. We had had a conversation with Mr. Claggett, a very brief conversation, we returned and had a short conversation with Mr. Brown and then awaited the arrival
14 of an Assistant State's Attorney in our office.
Q. Were any promises of leniency or any other inducement extended toward Richard Brown?
A. No, sir, no promises.
Q. At any time?
A. No, sir.
Q. Now, at approximately 2:00 o'clock in the morning what happened then?
A. Assistant State's Attorney Mr. Crilly, John Crilly, arrived, and he was given the file, the reports that we had on the case up to that point and made aware of the arrest and circumstances surrounding it. He then went into the center room and had a conversation with Mr. Brown.
Q. How long was he in there with Mr. Brown?
A. Twenty, twenty-five minutes.
Q. Then what happened next?
A. A court reporter had arrived in the interim. The court reporter, myself and Mr. Crilly then went into the room and a statement was obtained from Mr. Brown.
Q. Were you aware of any statements made to Mr. Brown—strike that.

Who was present during the second statement?

A. I was present, Assistant State's Attorney Mr. Crilly, the court reporter and the accused, Mr. Brown.

15 Q. Do you recall any constitutional warnings being issued to the defendant at this time?

Mr. HOWARD. Object to the leading form of the question.

The COURT. Repeat the question.

(Question read.)

The COURT. Sustain the objection.

Mr. CUSICK. At this particular point do you recall anything Mr. Crilly might have said to the defendant in your presence?

The WITNESS. A. In my presence?

Q. Yes, sir.

A. He introduced himself, he introduced the court reporter and myself. After the introductions he informed the accused of his constitutional rights.

Q. Without repeating them were they the same warnings that had been issued earlier?

A. In substance, yes, sir, same warnings.

Q. What was the defendant's reply or response, if any, to these statements by Mr. Crilly?

A. He indicated that he was aware of his rights, and he also waived his right to have an attorney present.

Mr. HOWARD. Objection.

The COURT. Sustained.

16 Mr. CUSICK. Q. Well, what actually did he say? What were his own words in response to these warnings?

The WITNESS. A. He indicated that he was aware of them.

Mr. HOWARD. Objection.

The COURT. Sustained. What was done? What was said?

Mr CUSICK. Q. What actually happened? Not what he indicated. What did he say with his own mouth?

The COURT. If anything.

Mr. CUSICK. Q. If anything?

The WITNESS. A. He told Mr. Crilly that he understood his rights.

Mr. CUSICK. I would like this marked as Respondent's Exhibit number 2 for identification.

(Thereupon said exhibit was marked Respondent's Exhibit number 2, for identification.)

Mr. CUSICK. Q. Now, Detective Lenz, I show you a typewritten document approximately eighteen pages long marked

as Respondent's Exhibit number 2 for identification. Will you examine that, please? And do you recall any knowledge about this document? Any personal knowledge?

17 Mr. HOWARD. Judge, I would object to it unless the witness has seen this document before.

The COURT. All right, qualify it.

Mr. CUSICK. Q. Were you present when subsequent questions were asked and answered by the State's Attorney and the defendant?

The WITNESS. A. I was not the detective present, no, at the taking of the statement.

Q. You were not the detective present?

A. No, sir. Not on this written statement. On the original statement.

The COURT. What if anything did you have to do with that statement?

The WITNESS. A. The statement taken by the Assistant State's Attorney?

The COURT. Yes.

The WITNESS. A. Nothing. I was not present during the taking of that statement.

Mr. CUSICK. Q. During the taking of this statement you were outside the room?

A. That is correct, sir.

Mr. CUSICK. No further questions.

Cross examination by Mr. HOWARD

Q. Now, Officer, you arrested Richard Brown on May 13th, 1968, did you not?

18 A. That is correct.

Q. When did the deceased in this case meet his death?

Mr. POMERO. Objection.

The COURT. Let him answer.

The WITNESS. A. I don't recall, but it was sometimes prior to the arrest.

Mr. HOWARD. Q. Would it be May 6th, 1968?

A. That date I believe is correct.

Q. Now, officer, when you testified a few minutes ago you said that you arrested the defendant Richard Brown in the 3800 block West on West End, is that right?

A. That is correct.

Q. Specifically, Officer, what was the address that you arrested this defendant?

A. I don't recall the exact address. I believe it was approximately 3827 or 47. I know the building was located on the south side of West End Avenue.

Q. All right. It was an apartment building, wasn't it?

A. Yes, sir, it was.

Q. Was the address where the defendant was arrested his private residence?

19 Mr. POMERO. Objection.

The COURT. Let him answer if he knows.

The WITNESS. A. To the best of my knowledge it was his residence.

Mr. HOWARD. Q. Now, when you—strike that. Who was present when Richard Brown was placed under arrest by you and Detective Nolan?

A. Detective Nolan, myself, and Mr. Brown.

Q. You were waiting at Mr. Brown's residence when he arrived home, weren't you?

A. That is correct.

Q. You were in the—inside of his apartment, weren't you?

A. I was inside the apartment, yes, sir.

Q. Where was Detective Nolan?

A. Detective Nolan——

Mr. CUSICK. Object, your Honor.

The COURT. Let him answer if he knows.

The WITNESS. A. Detective Nolan was in a hallway immediately outside of the room. This hallway had an adjoining corridor extending to the rear porch.

Q. Where was Mr. Brown when you first saw him?

A. When I first observed Mr. Brown he was coming

20 up the rear stairs, this would be the third floor, walking down a short porch up to the window behind which I was concealed.

Q. After he walked up near the window did you at that time place your revolver on Mr. Brown?

A. Yes, sir, I did.

Q. And while you held your revolver on Mr. Brown, Detective Nolan came from where he was and asked him to come back into the apartment—to come into the apartment?

A. That is correct.

Q. Now, Officer, did you have a warrant for the arrest of Richard Brown?

Mr. CUSICK. Objection.

The COURT. Sustain the objection.

Mr. HOWARD. Q. Did you have a search warrant to search his apartment?

Mr. CUSICK. Objection.

The COURT. Sustained.

Mr. HOWARD. Q. When you put your revolver out the window and held Mr. Brown at bay, what was the first thing you said to him?

Mr. POMERO. Objection.

The COURT. Let him answer.

Mr. POMERO. Held him at bay?

Mr. HOWARD. He testified he put his revolver

21 on him.

The WITNESS. A. Informed him that he was under arrest.

Mr. HOWARD. What did Mr. Brown say?

A. He didn't say anything at that time.

Q. After you told him that he was under arrest what took place after that?

A. Detective Nolan came out a side door which leads out onto the porch, drew his revolver and brought Mr. Brown back into the room.

Q. After you were inside the room, what was the first thing you said or Detective Nolan said to Mr. Brown?

A. We again informed him that he was under arrest. He denied being Richard Brown.

Q. After he denied being Richard Brown what was the next thing said?

A. We asked if he wanted a coat or jacket. He informed us he did not. We left the apartment, walked out, down the rear stairs into our car.

Q. Did you search Mr. Brown while he was in that apartment?

A. Yes.

Mr. CUSICK. Objection.

The COURT. Wait a minute.

22 Mr. HOWARD. Q. Did you?

The WITNESS. A. Yes, sir.

Q. Did you find upon Mr. Brown's person identification which showed that he in fact was Richard Brown?

A. No, sir. We found a driver's license bearing another person's name.

Q. After he said he was not Richard Brown what did you say to him, if anything?

A. We showed him a photograph that we had of the subject, Richard Brown, identifying him as such.

Q. Then what did Mr. Brown say after you showed him the photograph?

A. Nothing, sir.

Q. Did you search him before you showed him the photograph?

A. Yes, sir.

Q. After you showed him the photograph what was said after that?

A. As I recall nothing was said. He didn't make any reply. We had already searched Mr. Brown. We left the apartment.

Q. When what did you do?

A. Walked out the porch, down the rear stairs, through an alley to Washington Boulevard where we had our car
23 parked. The three of us got into the automobile and went to the Maxwell Station.

Q. Now, Officer, while you were in Mr. Brown's apartment you said you told him he was under arrest, is that right?

A. That is correct, sir.

Q. Did you tell him for what reason he was under arrest when you first drew your revolver?

A. No, sir. As I recall when I first saw Mr. Brown I told him he was under arrest.

Q. Now, while he was in the apartment while the search was being carried on did you tell Mr. Brown at that time for what reason he was under arrest?

A. Yes, sir.

Q. What words did you use?

A. He was under arrest for the murder of Roger Corpus.

Q. All right. Now, what did Brown say if anything after you told him he was under arrest for the murder of Roger Corpus?

A. He denied being Richard Brown.

Q. Is that the only thing that he said?

A. This is all that was said, sir, until we arrived at the Maxwell area.

24 Q. You had no conversation with him as he walked from the apartment building to your car?

Mr. CUSICK. Object, Judge.

The COURT. Let him answer.

The WITNESS. A. No, no conversation, sir.

Mr. HOWARD. Q. As you rode from the apartment building down to the Maxwell Street station was there any conversation between you and Mr. Brown or Detective Nolan and Mr. Brown?

A. Yes, sir.

Q. What was said by Mr. Brown and what was said by you?

A. As I recall Detective Nolan inquired of Mr. Brown as to whether or not he had ever driven or owned an Oldsmobile automobile.

Q. What did Mr. Brown say to that?

A. I believe he replied or I recall he replied that a friend of his had such an automobile.

Q. What other conversation took place?

A. That is all I recall, sir.

Q. Now, after you arrived in the Maxwell Street station where did you first take Mr. Brown?

A. Room 206, this would be the interrogation room, second floor.

Q. As you entered the Maxwell Street station did you
25 have a conversation with anybody in the presence of Mr. Brown?

A. Not as I recall, sir.

Q. When you walked up to the second floor of the Maxwell Street station did you have a conversation or did you say anything to anybody as you came into the station—into the second floor?

A. Not in Mr. Brown's presence. As I recall we placed Mr. Brown immediately in the interrogation room and then went into our office.

Q. Isn't it true that you told the sergeant there that you had him right while Mr. Brown was in your presence?

A. I don't recall saying that.

Q. You could have though, couldn't you?

Mr. POMERO. Objection to that.

The COURT. Sustained.

Mr. HOWARD. After Mr. Brown was taken into the interrogation room was there anybody else in the room besides Mr. Brown, Detective Nolan and yourself?

The WITNESS. A. No, sir.

Q. What was the first thing that took place after Mr. Brown was taken into the room?

26 A. He was seated down in a chair at a table inside the room. We went out of the room, the door was closed. I went into the homicide office and obtained the homicide file on the Roger Corpus death.

Q. Immediately after he had been seated in the room?

A. That is correct.

Q. You left Mr. Brown in the room with Detective Nolan?

A. No, I don't recall Detective Nolan was in the room.

Q. Well, let's back up a minute. When you first got to the Maxwell Street station you, Mr. Brown, Detective Nolan went up to room 206, is that right?

A. That is correct.

Q. All three of you were in the room?

A. That is correct.

Q. Now, was—Mr. Brown was seated in a chair, is that right?

A. That is correct.

Q. Was he handcuffed at that time?

A. I don't recall his being handcuffed, no, sir.

Q. Did you handcuff him when you left the apartment building?

A. No, sir, I didn't have handcuffs.

27 Q. After you got in the room and you, three of you in the room, you say you left the room?

A. We left the room, both of us left the room, Detective Nolan and I, and Mr. Brown was seated in a chair. There were approximately four chairs in there and a table. He was seated in one of the chairs. This would be a chair facing the door with his back to the windows. We walked out of the room, closing the door, and walked to our office which was approximately twelve feet from this room.

Q. Both of you left?

A. Yes, sir.

Q. How long were you gone?

A. Ten minutes.

Q. Did you go back in the room with Detective Nolan?

A. Yes, sir.

Q. After you and Detective Nolan came back in the room what happened after that?

A. Mr. Brown was advised of his Constitutional rights.

Mr. Howard. Object to that. That is not responsive to the question.

The Court. Read the question.

28 (Question read.)

Mr. Cusick. He answered.

The Court. What happened, not what he said, what was said. Ask him what happened.

The Witness. A. I sat down in a chair across from the table facing Mr. Brown. Detective Nolan sat, as I recall, to Mr. Brown's left in another chair. I had the homicide file with me. I placed it on the table and opened it.

Q. What was the first thing after you placed the homicide file on the table what was the first thing you or Detective Nolan said to Mr. Brown?

A. I informed Mr. Brown of his Constitutional rights.

Mr. Howard. Object, your Honor.

The Court. Read the question.

(Question read.)

The Court. What was his answer?

(Answer read.)

The Court. Let it stand.

Mr. Howard. I object to it on the ground that the answer is given by the witness is a conclusion. What Constitutional rights? Might have advised him he has a right to vote.

The Court. Well, do you want to ask him about it?

29 Mr. Howard. I asked him what he said. What was the first thing he said to Mr. Brown immediately after he placed the file on the desk.

The Court. All right. Give him a specific answer.

The Witness. A. As best I can recall, counsellor, I said, "Richard Brown, I want to warn you that you have a right to remain silent. Do you understand?" He told me that he did. I then warned him that he had a right to have an attorney present if he desired, and if he couldn't afford an attorney, a free attorney would be provided for him by the State. I asked him if he understood that. He informed me that he did. I then asked Mr. Brown if he wished to have an attorney present at this time. He informed me that he did not, he did not have an attorney. I then asked him or told him rather that anything that he might say or write could and would be used against him at a future date in a court of law. I asked him if he understood this, and he told me that he did understand.

Mr. Howard. Q. After he said that I understand these things

that you just mentioned then what was the next thing that was said or done?

30 A. I informed Mr. Brown that we were aware of an incident that had taken place in a pool room on 5th Avenue, on, as I recall, the 3rd—approximately the 5th of May 1968. His answer was, "Oh, you know about that." I also informed him that we had obtained a bullet from the ceiling of this pool room and that this bullet had been taken to our crime lab to be compared with bullets taken from Roger Corpus' body.

Mr. POMERO. Judge, excuse me. Like to object now. Going into the substance.

Mr. HOWARD. Talking about conversation that took place prior to the time the man made a statement to him.

Mr. CUSICK. I object to any conversation that goes to the substance of the case. The issue is——

Mr. HOWARD. It is a privilege——

Mr. CUSICK. The issue here is whether the statement was voluntary.

Mr. HOWARD. We can't know until we know what took place inside the station.

The COURT. Carry on. Overrule the objection.

Mr. HOWARD. Go ahead.

The WITNESS. A. His answer to this was, "Oh, you know

31 that too." I then asked Mr. Brown if he wished to tell us what he knew about Roger Corpus' homicide. He informed us that he did.

Q. Before he told you that he wanted to give a statement concerning Roger Corpus you had told him about a shooting in a pool room, did you not?

A. Not a shooting, sir. A weapon being fired.

Q. Fired, yes. You also told him that the pellet that was retreived in the pool room was the same kind of pellet that was found in the body of the deceased, didn't you?

Mr. POMERO. Objection.

Mr. HOWARD. Q. Pardon?

The WITNESS. A. No, sir, we did not.

Q. Let's back up just a minute.

Mr. POMERO. I had an objection, counsel.

Mr. HOWARD. Sorry.

The COURT. What is the objection?

Mr. POMERO. He is assuming facts not yet in evidence.

The COURT. All right, the witness has already said no, so let it stand.

Mr. HOWARD. Let's back up a minute, Officer. You said that after you warned Mr. Brown about his right to have a lawyer, and so forth, and he said I understand——

32 The WITNESS. A. That is correct, sir.

Q. You then said that there was a conversation wherein you told Mr. Brown that you knew about a shooting in a pool room, is that right?

A. About an incident.

Q. An incident?

A. That is correct.

Q. What—Now, what else did you say to him when you said we know about the incident?

A. I informed him that we had retrieved a bullet from the ceiling and that this bullet had been sent to the crime lab to be compared with the bullets taken from Roger Corpus' body.

Q. What did Mr. Brown say after you informed him about the sending of the pellet to the crime lab?

A. His response was the same as he had originally given when I told him about the pool room, "Oh, you know about that."

Q. Now, what was the next thing that was said between you and Detective Nolan and Mr. Brown?

A. I asked Mr. Brown if he wished to tell us about the Roger Corpus homicide.

Q. What did he say?

A. He said he did.

33 Q. And did he at that point make a statement concerning Roger Corpus' death?

A. Yes, sir, he did.

Q. You wrote down, Officer, or typed up the statement that was made by Richard Brown, and in that statement there was certain questions asked by you and Detective Nolan and he gave answers to those questions, is that right?

A. The questions in the statement were asked by Detective Nolan and I was the typist.

Q. You were there?

A. That is correct, I was present.

Q. And the questions that you asked of Mr. Brown and the answers he gave were included in the statement, is that right?

A. That is correct.

Mr. HOWARD. Where is that statement?

Q. Officer, I show you what has been identified as People's

Exhibit No. 1 for identification. I ask you if this is the statement that was typed up by Mr. Brown or typed up by you and signed by Mr. Brown?

A. Yes, sir, this is a copy of the statement.

Q. Now, when this statement was being typed up you
34 did not type down the facts that you told Mr. Brown that he had a right to have a lawyer, did you?

A. In the statement, sir, on the first page you will see the question, "You have been advised of your Constitutional rights."

Q. You didn't answer my question. I asked you did you type down in this statement the fact that you told Mr. Brown that he had a right to have a lawyer?

Mr. CUSICK. I will stipulate that the particular warnings were not included.

Mr. HOWARD. I am not asking for a stipulation. We are talking about what took place.

The WITNESS. A. I don't believe the statement includes each and every——

Q. No. I asked you to look at the statement and did you put in the statement—maybe you did, I don't know, did you tell in that statement that Mr. Brown signed, is it in that statement initially that Mr. Brown—you warned him that he had a right to have a lawyer?

Mr. CUSICK. Your Honor, I will object. Already answered he did not. Trying to say the Constitutional warnins are in there but not enumerated.

Mr. HOWARD. Object to the State's Attorney making
35 a speech, Judge.

Mr. CUSICK. It isn't a speech. To save time I will stipulate they are not enumerated.

Mr. HOWARD. I am not looking for any short cuts. It is very important as to what is in that statement. I am merely asking this officer if he told him in the statement that he had a right to have a lawyer.

The COURT. Let him answer.

The WITNESS. A. It is included in the statement, sir. The fact that you can have an attorney present.

Mr. HOWARD. Q. All right. Did you also tell him in the statement that, is it written in that statement that if you don't have funds to hire a lawyer the State will hire one for you?

A. That is not shown in the statement, no, sir.

Q. Did you write down on that statement that was signed by Mr. Brown that not only do you have a right to have a lawyer but you have a right to have one here and now? Is that in the statement?

A. That is present there, sir, that you can have an attorney at this time.

Q. All right. Now, did you say in that statement, did you tell Mr. Brown in that written statement that anything that he may say can be used, later used against him?

36 A. That wording does not appear in that statement, sir.

Q. When did Mr. Brown state anywhere in that statement that he did not want a lawyer?

A. Not in those words, no, sir.

Q. Is it in that statement, does he say I do not want a lawyer?

A. No, sir, not in those words.

Q. Did he say in that statement that I understand that anything that I may say can be used against me?

A. No, sir, not in those words.

Q. After Mr. Brown had made a statement to you an Assistant State's Attorney was called, is that right? Is that what you said?

A. Sometime later, yes, sir.

Q. How much later?

A. A statement was taken as best as I recall about 8:45, took us approximately 25 minutes. We left the station shortly after 9:00, went down—went to the area of Homan and Madison, made a tour of this area. I can't approximate the time. We then left that location with Mr. Brown, went to the central police building, 1121 State where we attempted to obtain a picture of Mr. Claggett, were unsuccessful, came down
37 again, got into the vehicle, police vehicle, and we returned to the area of Homan and Madison and were successful in locating Mr. Brown shortly before midnight.

Q. Mr. Brown or Mr. Claggett?

A. Mr. CLAGGETT. I am sorry.

Q. Let me ask you this, officer. Before Mr. Brown told you about what he knew about the Corpus death isn't it true that you told Mr. Brown that you wouldn't prosecute him if he helped the police?

A. No, sir, I did not.

Q. Mr. Brown went with you when you left the police station to help you find this man Claggett didn't he?

A. That is correct, sir.

Q. Wasn't that because you told him that he would not be under arrest and would not be prosecuted if he told you who the real man was?

A. No, sir, he was already under arrest.

Q. Now, it was about 7:45 thereabouts when you placed Mr. Brown under arrest, is that right?

A. That is correct, sir.

Q. Did you take Mr. Brown down to 11th Street or any other place before any judge or magistrate?

A. 7:45?

Q. Yes.

38 A. No, sir.

Q. Were you aware of the fact that a special bond court had been set up at 1121 South State on the 11th floor?

Mr. POMERO. Object, Judge.

The COURT. What is your objection?

Mr. POMERO. Irrelevant.

Mr. HOWARD. Of course, the statute provides for it. I don't see how it is irrelevant.

Mr. POMERO. Take him down to the station and question him.

Mr. HOWARD. I am asking what the statute calls for.

The COURT. Let him answer.

The WITNESS. A. I am aware that there is a night bond court.

Mr. HOWARD. Q. Did you take Mr. Brown there?

A. No, sir.

Q. Where was the first time you took Mr. Brown before any Judge or magistrate after he was placed under arrest?

A. It would be the morning, best as I can recall looking at the statement. This statement was taken on the 13th of May. He would have went to Court that morning. Appeared in Felony Court.

39 Q. He had already made a statement both to you and to the State's Attorney when he was first taken before any Judge or magistrate, hadn't he?

A. The statement given to the State's Attorney was approximately 2:00 or 2:30 A.M. on the 13th. As I recall the defendant appeared in Court at 9:30 A.M. on the 13th.

Q. Officer, when you told Richard Brown that he was under arrest at this address on West End in his apartment, you said

that you told him he was under arrest for the murder of Corpus?

A. Roger Corpus.

Q. Did you say for the murder of Roger Corpus?

A. That is correct, sir.

Q. When was the next time you told him he was under arrest for that?

A. In the station.

Q. When you told him that he was under arrest for the murder of Roger Corpus at the station he had not at that time made a statement to you nor Officer Nolan, had he?

A. That is correct.

Q. He had not made a statement to the Assistant State's Attorney?

A. That is correct.

40 Q. Did you tell Richard Brown in the apartment when you told him he was under arrest for the murder of Roger Corpus that he could—if he was convicted of murder he could go to the penitentiary for a minimum of 14 years?

Mr. POMERO. Objection.

Mr. HOWARD. I will connect it up, if the Court please.

The COURT. All right, if you connect it up.

The WITNESS. A. In the apartment at the time of the arrest?

Mr. HOWARD. Q. Yes.

A. No, sir.

Q. Did you tell him when you—did you tell him that on a charge of murder that he could be convicted of manslaughter?

A. Did I tell him this?

Q. Yes.

A. When and where?

Q. In the apartment.

A. No, sir.

The COURT. Connect this up too, counsel?

Mr. HOWARD. Yes, sir.

Q. Did you tell him in the apartment that he could be convicted for involuntary manslaughter on a charge

41 of murder?

The WITNESS. A. No, sir.

Q. Did you tell him in the station prior to the time that he made the statement that if he was convicted of murder he could be sent to the penitentiary for a minimum of 14 years?

A. No, sir.

Q. Did you tell him that if he was convicted of murder he could be sent to the electric chair?

A. No, sir.

Q. Did you tell him——

Mr. POMERO. Let the record show we have continuing objection.

The COURT. All right. Let the record also show that it will be stricken if counsel doesn't tie it up.

Mr. HOWARD. Very well, your Honor.

Q. Did you tell him that if on a charge of murder that he could be convicted of manslaughter which he could go to the penitentiary for a period of time from one to twenty years?

The WITNESS. A. This was all prior to his statement?

Q. Yes.

A. We are referring to this statement?

Q. Yes, sir.

42 A. No, sir.

Q. Did you tell him that on a charge of murder he could be convicted of involuntary manslaughter for which he could go to the penitentiary for one to ten?

A. No, sir.

Q. Do you know prior to the time—strike that. Did anybody tell Mr. Brown in your presence what the penalty was for murder, manslaughter, or involuntary manslaughter before he made that statement?

A. No, sir.

Mr. HOWARD. No further questions.

Mr. CUSICK. Just one question.

Redirect examination by Mr. CUSICK:

Q. The defendant make, ever make any remark to you regarding State's evidence?

A. Yes, sir.

Q. When did he make this remark?

A. After having obtained the written statement, the first statement given by Mr. Brown at 8:45 P.M. and while we were preparing to leave the building to go to the area of Homan and Madison he informed us that he would want to be—he would like to turn State's evidence against Claggett as he was not the shooter nor did he have any idea that Claggett was going to do what he did.

Mr. CUSICK. I see. No further questions.

Mr. HOWARD. No further questions.

Mr. CUSICK. You may step down.

(Witness excused)

Mr. CUSICK. I will check, see if Mr. Crilly is back there.

JOHN W. CRILLY, called as a witness on behalf of the Respondent, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. CUSICK:

Q. State your name, please.

A. John W. Crilly.

Q. Your occupation?

A. Assistant State's Attorney of Cook County.

Q. Now, how long have you been employed as an Assistant State's Attorney?

A. Five and a half years.

Q. Were you so employed as an Assistant State's Attorney on the morning of May 14th, 1968?

A. Yes, I was.

Q. Directing your attention to that morning were

44 you on any type of night call for the State's Attorney's Office?

A. Yes, I was.

Q. What was the period of night call?

A. It would be from 5:00 P.M. to 9:00 A.M. the following morning.

Q. That would be 5:00 P.M., May 13th, to 9:00 A.M., May 14th?

A. Yes.

Q. Recall going to the Maxwell Street Station at any time on the morning of the 14th?

A. Yes. I received a call at 1:00 A.M. and I proceeded to Area Four. I got there a little before 2:00 o'clock.

Q. Where did you go when you got there?

A. I went upstairs to the Homicide Section.

Q. When you arrived there did you have a conversation with any police detectives?

A. Yes, I did. I talked to Detective Lenz, I believe.

Q. Did you also see the defendant at that time?

A. After I talked to Detective Lenz, I went in and talked to the defendant.

Q. Recall where you talked to him?

A. I talked to him in a little interrogation room.

45 Q. Who was there when you talked to him?

A. Pardon?

Q. Who else was in there when you talked to him?

A. The first time I talked to him there was no one in the room, just he and myself.

Q. The defendant, Richard Brown, you have a recollection today of what he looks like?

A. No, I really don't remember what he looked like.

Q. Well, can you identify him today?

A. Yes, I see him sitting right there.

Q. Referring back to that particular morning in question you have a recollection what his physical condition was when you first saw him?

A. Yes, I do.

Q. Notice anything unusual or out of the ordinary about his condition?

A. No, I didn't.

Q. Was he speaking freely and coherently?

A. Oh, yes.

Mr. HOWARD. Objection to the use of the word "freely."

The COURT. Sustain the objection.

Mr. CUSICK. As to the words "freely", Judge?

The COURT. Yes.

Mr. CUSICK. Q. Now, for approximately how long did
46 you talk to him alone?

The WITNESS. A. Oh, for the better part of half an hour, I would say.

Q. In substance what did you say to him and what did he say to you?

A. Upon entering the room I told him that he was entitled to have an attorney present. He said he knew that, he had already been so informed of his Constitutional rights by the officers who had talked to him before. And I informed him of all of his Constitutional rights.

Mr. HOWARD. Objection.

The COURT. All right. Let it stand provided he states what they were.

Mr. CUSICK. Q. What specifically did you inform him?

The WITNESS. A. Well, I had a card that had certain rights on it and I just read those rights off to him when I first talked to him. Then I sat and——

Q. Do you recall what you read to him?

A. Yes, I told him that he was entitled to have an attorney and that if he could not afford one the State would provide one for him.

Mr. HOWARD. Your Honor, at this time the defense
47 will impose an objection to the State's Attorney testifying as to what he read off a card unless the card is presently in Court. It would be marked and introduced.

Mr. CUSICK. Judge, if he can recall——

The COURT. Can you account—have the card on you?

The WITNESS. A. Yes, it is, Judge. It is in my pocket.

The COURT. Want to pull it out and read it?

The WITNESS. A. I told him that he had a right to remain silent, that if he chose not to remain silent, anything he said or wrote could and will—could and would be used as evidence against him in Court. I told him that he had a right to consult a lawyer before any questioning, and that he had a right to have the lawyer present with him during any questioning. And he not only had a right to consult with a lawyer before any questioning, but that if he lacked the financial ability to retain a lawyer, a lawyer would be appointed to represent him before any questioning, and he could have the lawyer present with him during any questioning.

Mr. CUSICK. Q. Do you recall what responses, if any, he made to this statement by you?

48 A. He said that he did not want a lawyer, that he did want to talk to me.

Q. He did want to talk to you?

A. Yes, he did.

Q. Did you subsequent thereto ever leave the room the defendant was in?

A. Yes, as I say, after I sat there and talked to him for the better part of a half an hour, then I left the room and then came back in the room with the officer and a court reporter.

Q. When you went back in the room, you were with which detective, do you recall?

A. Detective Nolan.

Q. And a court reporter?

A. Yes.

Q. Recall his name?

A. Emmett Smith.

Q. He is a State's Attorney's court reporter?

A. Yes, he is.

Q. And yourself?

A. That is correct.

Q. Approximately what time did the court reporter begin taking the dictation?

A. Oh, it was approximately 2:30 A.M.

Q. I show what has been previously marked Respond-
49 ent's Exhibit 2 for identification and ask you to peruse that document and see if you can tell us if you recall anything about it?

A. Yes, this is the—this represents the questions I asked Mr. Brown and the answers he gave me on that morning.

Q. Did you have an opportunity to peruse this prior to coming up here today?

A. Yes, I did.

Q. Do the questions and answers on here truly and accurately portray the questions and answers that were asked and answered on the date in question?

A. Yes, it does.

Q. Prior to taking any information from the defendant Brown with the court reporter present, what did you say to him on the record in the court reporter's presence?

A. Once again, I read him the card. I have the card, I always carry it with me as—especially when I am on homicide call, and I just read him the same card I had previously read here.

Q. As you previously testified to about five minutes ago?

A. Yes.

50 Q. What was his reply to the second set of warnings that you gave him in the presence of the court reporter?

A. The same reply that I had previously had gotten from him. He said that he knew his rights and that he wanted to make this statement.

Q. What time was the statement finished, approximately?

A. I would say it was close to 3:00 A.M.

Q. Was the defendant issued any promises of leniency in your presence?

A. No, he was not.

Q. Was he threatened in any way by anyone?

A. No, he was not.

Q. Did his physical condition appear to be normal when the statement was finished?

A. Yes, it was. Prior to taking the statement he, I believe, he asked one of the officers if he could have some water, and the officer gave him some water. I am sure he was smoking a cigarette. He asked me for a cigarette when I first talked to him,

and I asked him if he was hungry and wanted anything to eat and he said he did not.

Mr. CUSICK. Okay. No further questions.

Cross examination by Mr. HOWARD:

51 Q. Attorney Crilly, when you arrived at the Maxwell Street Station, you were told by Detective Nolan and Detective Lenz that the defendant had already made a statement, weren't you?

A. Yes, I was told that by Detective Lenz. Detective Nolan wasn't there when I got there.

Q. Did Detective Nolan show you the typewritten statement that had been made by Mr. Brown?

A. Not at that time, he did not.

Q. Do you know how long Mr. Brown had been in the custody of the police when you arrived at the station?

A. No. I asked Mr. Brown that, but I don't recall.

Q. You said that when you spoke with Mr. Brown you read off to him certain warnings you just testified to on a card, is that right?

A. Yes, sir.

Q. When you were warning Mr. Brown did you tell him what the punishment was if he was convicted of murder?

A. No, sir, I did not.

Q. Did you tell him that in a charge of murder—that on a charge of murder he could be found guilty of manslaughter——

Mr. CUSICK. Your Honor——

52 Mr. HOWARD. Q.——for which he could be sent to the penitentiary from one to twenty years?

Mr. CUSICK. Let the record reflect there will be another continuing objection.

The COURT. What is the pertinency of this?

Mr. HOWARD. I promise the Court as a matter of law I will show the relevancy of it on my motion.

The COURT. With Illinois law?

Mr. HOWARD. Yes.

The COURT. All right. I will hold you to it.

Mr. HOWARD. Q. Did you tell him that he could—if convicted of murder that he could be sent to the penitentiary for a minimum of 14 years?

The WITNESS. A. No, sir, I did not.

Q. Did you tell him that he could be sent to the electric chair?

A. No, sir.

Q. Did you tell him anything concerning the definition or explain the charge of murder, manslaughter or involuntary manslaughter prior to the time that he made the statement to you?

A. No, sir. Before he made the statement I told him that I was sure he would be charged with murder.

Q. You didn't tell him what the penalty for murder was, did you?

53 A. No, sir.

Q. Now, Attorney Crilly, I show you what has been marked People's Exhibit No. 2 and has been identified by you as the statement taken from Richard Brown in the Maxwell Street Station on May 13, is that right? Or 14th?

A. Yes, sir.

Q. May 14th?

A. Yes.

Q. You said that you examined this document, read it over, before you came to the Courtroom today, is that right?

A. Yes, sir.

Q. When you informed Mr. Brown the court reporter was writing down on the statement you were making, informing Mr. Brown about these rights, is that right?

A. Yes.

Q. This court reporter was writing down the answers that Mr. Brown gave relative to the questions that you put to him, is that right?

A. Yes.

Q. I show you People's Exhibit No. 2 and ask you to look at it carefully. I ask you did Mr. Brown say in People's Exhibit No. 2 that I do not want a lawyer?

54 Mr. POMERO. Objection. It speaks for itself.

The COURT. Let him answer.

The WITNESS. A. No. He does not say that.

Mr. HOWARD. Q. Does Mr. Brown say—did Mr. Brown say whether or not he had any money to hire a lawyer?

A. No, sir, he did not.

Q. Did you ask him whether or not he had any money to hire a lawyer?

Mr. CUSICK. Objection.

The COURT. Sustained.

Mr. CUSICK. He wouldn't be required to ask him.

Mr. HOWARD. Pardon?

Mr. CUSICK The objection is sustained.

The COURT. Sustain the objection.

Mr. HOWARD. Q. When you arrived at the Maxwell Street Station, Attorney Crilly, did you take Mr. Brown before any Judge or magistrate?

The WITNESS. A. No, sir.

Q. Did Mr. Brown have a lawyer when you arrived at the Maxwell Street Station?

A. No, he did not.

Q. Was an attorney brought to the Maxwell Street Station on Mr. Brown's behalf at any time while you were there?

55 A. No.

Q. You were representing the People of the State of Illinois, weren't you?

A. Yes, sir.

Mr. CUSICK. Objection to this, your Honor.

The COURT. Sustain the objection.

Mr. HOWARD. No further questions.

Mr. CUSICK. Nothing further.

(Witness excused)

The COURT. I think we will break here for lunch. 1:00 o'clock.

(Thereupon said cause was recessed until 1:00 o'clock of the same day, December 11, 1968.)

56 State of Illinois, County of Cook

In the Circuit Court of Cook County

County Department-Criminal Division

Ind. No. 68–2275

THE PEOPLE OF THE STATE OF ILLINOIS

v.

RICHARD BROWN (IMPLEADED)

Charge: Murder
Before Hon. L. Sheldon Brown
December 11, 1968 at 1:45 o'clock P.M.

COURT CONVENED PURSUANT TO RECESS

PRESENT: Hon. Edward V. Hanrahan, State's Attorney of Cook County, by Mr. Thomas Cusick, Assistant State's Attorney, on behalf of the Respondent; Mr. George Howard on behalf of the Petitioner.

The BALIFF. Want the prisoner out?

The COURT. Bring him out.

Mr. HOWARD. Sorry, Judge.

The COURT. Get your business done?

Mr. HOWARD. No, sir. I am sorry I'm late, though.

Mr. CUSICK. The State at this time will call Detective William Nolan to the stand.

57 WILLIAM NOLAN, called as a witness on behalf of the Respondent, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. CUSICK:

Q. State your name and area of assignment.

A. Detective William Nolan, Area 4 Homicide.

Mr. CUSICK. Any witnesses in the Courtroom?

Mr. HOWARD. No.

Mr. CUSICK. Q. Calling your attention to the 13th of May, 1968, did you have occasion to make the arrest of one Richard Brown?

A. Yes, sir, I did.

Q. Approximately what time of the day did that arrest occur?

A. Approximately sometime between 7:30 and 8:00 o'clock P.M., I believe.

Q. Where was the defendant arrested?

A. At his home on 3800 block on West End Avenue.

Q. Who else was present when the arrest was made besides yourself and the defendant?

A. Detective William Lenz.

Q. Was the defendant transported somewhere?

A. Yes, sir, he was.

58 Q. Where was that?

A. Into Area 4 headquarters, 943 West Maxwell.

Q. Once inside the building was he brought to any particular location in the building?

A. Yes, sir, we have three interrogation rooms at the west end of the building. He was placed in the center of these three rooms.

Q. What was his physical condition at that time if you recall?

A. Very good.

Q. Did you notice anything abnormal about him?

A. No, sir.

Q. Do you see the man you arrested on that occasion, do you see him in the Courtroom today?

A. Yes, sir.

Q. Point him out.

Q. He is sitting right over there in front of the bailiff.

Mr. CUSICK. Indicating for the record the defendant Brown.

Q. Did you have a conversation with him in the station?

A. Yes, sir.

Q. Where did the conversation take place?

A. In the interrogation room.

59 Q. Who else was present besides you and the defendant?

A. Detective Lenz.

Q. What did you say to him and what did he say to you?

A. We told him that he was brought in for the investigation of the fatal shooting of Roger Corpus.

Mr. HOWARD. Objection.

The COURT. What is the objection?

Mr. HOWARD. Time, your Honor.

The COURT. Time?

Mr. HOWARD. Yes, sir.

The COURT. What is the time?

Mr. CUSICK. Q. What time did this conversation commence?

The WITNESS. A. When we first brought him in the station? I would say probably some time around 7:30 in the evening.

The COURT. Who was present?

The WITNESS. A. Detective Lenz and myself.

Mr. CUSICK. Q. What time did the conversation with the defendant commence inside the interrogation room?

A. Within a few minutes after we got in the room.

Q. Do you know what time you got in the room?

60 A. Not exactly, I don't recall.

Q. It was some time after the arrest, though, at 7:45 or 8:00 o'clock, is that right?

A. Yes, sir.

Q. What was the—what did you say to the defendant and what did he say to you?

A. Well, I don't recall if I asked him or if Detective Lenz asked him if he know why he was there and as the—why we had him brought in, and about the incident in a pool room several weeks prior to this. And at this time he stated that, "Well, you know about that."

Q. Prior to saying this to him, did you issue any Constitutional warnings?

Mr. HOWARD. Objection.

The COURT. Sustained.

Mr. CUSICK. Q. In addition to the conversation regarding the pool room, what else, if anything, was said at that time?

A. Well, as soon as we got in the room, Detective Lenz warned him of his Constitutional rights.

Q. Detective Lenz warned him or you warned him?

A. I believe it was Detective Lenz, I am not sure.

Q. Did this take place before the conversation regarding the pool room or did it take place—did the warnings

61 take place after the conversation regarding the pool room?

A. Before any conversation.

Q. Was the door closed?

A. No, I don't believe so.

Q. How large a room is this?

A. I would say roughly maybe ten by fifteen or something like that.

Q. Now, what specifically did you say, did you or Detective Lenz say to him in regard to his Constitutional right?

A. Told him that he had a right to remain silent, that anything he told us or any written or oral statement he gave would be used against him in Court at a later date. Also told him that he had the right to have an attorney, and that if he couldn't afford an attorney one would be provided for him, and he could have the attorney present during any questioning or any statements. Then he was asked if he understood all of this, and he said, yes, he did. And——

Q. Did any additional conversation take place?

A. Then we had additional conversation after this.

Q. What was that?

A. I told him about the shooting in the pool

62 room approximately a week or two prior to the death of Roger Corpus and he said, "Oh, you know about that."

Q. Then did—was it at that point were additional questions asked?

A. Yes, he said that he felt he wanted to tell the whole truth.

Q. Was any type of recording instrument present in the room?

A. No, sir, not at this time.

Q. Was there a typewriter in the room?

A. Yes, there was a typewriter.

Q. When was that brought in?

A. I believe the typewriter was in—these rooms they usually carry typewriters. If there isn't one in there we just get one from outside and bring it in.

Q. Was any typing done at this point?

A. Yes, sir.

Q. Who asked the questions, if you recall?

A. I asked the questions.

Q. I show you what has been previously marked as Respondent's Exhibit No. 1 for identification, and ask you to take a look at that document and see if you can tell us if you can recall anything about it?

A. This is the statement that Detective Lenz and myself took from——

63 Q. Who asked the questions that are in that particular document?

A. I did.

Q. Who typed up the document?

A. Detective Lenz.

Q. And who was present while this was going on?

A. Mr. Richard Brown, Detective Lenz and myself.

Q. Is it a true and a—does that, those two sheets of paper truly and accurately portray the questions and answers that were given on that day?

A. Yes, sir.

Q. This took place once again, where?

A. In the Area 4 headquarters, second floor, middle interrogation room. I believe it is marked Room 206 on the door.

Q. Is there a signature marked on the bottom of both sheets?

A. Yes, sir.

Q. Whose signature is that?

A. Richard Brown.

Q. Did you see the defendant affix his signature?

A. Yes, sir, I did.

Q. Did he do so in your presence?

A. Yes, sir.

Q. Now, prior to the warnings or even after the Con-
64 stitutional warnings that you testified to was the defendant threatened in any way by anyone in your presence?

A. No, sir.

Q. Was he promised leniency in any way in your presence?

A. No, sir.

Q. Was the defendant allowed to smoke or have liquids, water or anything.

Mr. Howard. Your Honor, I object to the leading form of the questions by the State's Attorney.

The Court. You are leading the witness.

Mr. Cusick. Q. What was the defendant—were any privileges extended—strike that.

Were any personal privileges extended to the defendant at any time?

Mr. Howard. I object to that form of the question, if the Court please.

The Court. Sustained.

Mr. Cusick. Now, approximately how long did this statement take?

The Witness. A. The statement that we took was I would say approximately half an hour.

Q. Upon completion of it what happened next?

A. Mr. Brown stated that he would try and assist us
65 in apprehending Mr. Claggett, and at this time we left

the area and we went to the vicinity of Madison and Homan, Madison and St. Louis.

Q. When you say we, who do you mean?

A. Detective Lenz, myself and Mr. Brown.

Q. On your initial attempt to go to Homan and Madison were you successful in locating anyone?

A. No, sir. Mr. Brown told us that this was the area that Mr. Claggett frequents, and we looked for him for quite a while, and we didn't know what he looked like so we decided to leave the area and we went down to the Bureau of Identification at 11th and State, see if we could obtain a picture of Mr. Claggett.

Q. Were you successful?

A. No, sir, we were not.

Q. Did you again leave 11th and State?

A. We left 11th and State and we were going back to the area. We decided to go back out west and try one more time to see if we could see Mr. Claggett. We went around the area a few times, and as we went south on St. Louis as we were approaching Monroe Street, several people were crossing the street in front of our car. Mr. Brown was in the back seat,
shouted, "There is Mr. Claggert, now. Grab him." And
66 Detective Lenz and I got out of the car and we apprehended Mr. Claggett, placed him under arrest and transported both Mr. Claggett and Mr. Brown back into Area 4 headquarters.

Q. Approximately what time did you arrive back at Area 4 headquarters with the now two people arrested?

A. This would have to be sometime after midnight. Sometime between midnight and 12:30 A.M.

Q. Where was the defendant brought when you returned to the station at this time?

A. We brought Mr. Brown back into the same interrogation room. We placed Mr. Claggett in another interrogation room.

Q. At this stage of the proceedings, did you have an opportunity to observe the physical condition and demeanor of the Defendant Richard Brown?

A. Yes, sir, I did.

Q. Will you describe his appearance and condition then?

A. He was well groomed at the time. Was no physical marks or anything on him. There was no visible signs of any type of injury.

Q. Was he talking coherently?
A. Yes, sir.
Q. Do you recall what, if anything, happened at ap-
67 proximately 2:00 o'clock in the morning?
A. I believe around that time the State's Attorney arrived in the area.
Q. Do you recall his name?
A. Mr. Crilly.
Q. Between the time you got to the station until the time Assistant State's Attorney Crilly arrived, who was in the defendant's presence?
A. Mr. Brown?
Q. Yes.
A. Either be Detective Lenz or myself.
Q. I see. And during this period of time was any promises of leniency made in this direction toward him?
A. No, sir.
Q. Was he physically abused or harassed in any way, if you know?
A. No, sir.
Q. Now what happened at 2:00 o'clock when Mr. Crilly arrived?
A. Mr. Crilly arrived and we explained the facts of the investigation up to this point, and then he went in and he talked to Mr. Brown for approximately 20 minutes, maybe a half hour.
Took an oral statement, I believe, then sat down——
68 Mr. HOWARD. Objection.
The COURT. Sustained.
Mr. CUSICK. Q. You weren't in the room when Mr. Crilly was talking to him?
A. No, sir, I wasn't.
Q. Did Mr. Crilly come out of the room?
A. Yes, sir.
Q. And what happened next?
A. Mr. Crilly said that he was going to take a written statement from Mr. Brown, and myself; Mr. Crilly and the court reporter entered the room and the four of us sat down and Mr. Brown gave a written statement.
Q. This took place in what room now?
A. I believe the same room, Room 206.
Q. Were you present when any Constitutional warnings were

administered to the defendant prior to this recorded statement by the court reporter?
A. Yes, sir, I was.
Q. Were those warnings in substance the same warnings you testified to a few minutes earlier?
A. Yes, sir.
Q. What was the defendant's reply to these new set of warnings by Assistant State's Attorney Crilly?
A. He stated that he understood them.
69 Q. I show you what has been previously marked as Respondent's Exhibit No. 2 for identification and ask you if you had a chance to peruse that at all today at any time?
A. No, sir, I have not.
Q. You are looking at it for the first time today, is that right?
A. Yes, sir.
Q. Just looking at Page No. 1, do you recall any——
Mr. HOWARD. I object to this officer looking at it unless he can identify the document as being his or having prepared it, or having something to do with it previously.
Mr. CUSICK. Q. Officer, were you present when that statement was taken?
The WITNESS. A. Yes, sir, I was.
Q. Is there a date indicated on the front page of that statement?
A. Yes, sir.
Q. What date is that?
A. Tuesday, May 14th, 1968.
Q. Are the parties who were present during that statement indicated on Page 1?
A. Yes, sir.
Q. Who were those parties?
70 A. Richard Brown, John Crilly, Assistant State's Attorney, myself, and reported by Emmett Smith, court reporter.
Q. You do not have an independent recollection of each and every question and answer in this document, is that correct?
A. No, sir.
Mr. CUSICK. Nothing further.
Cross examination by Mr. HOWARD:
Q. Officer, where was Mr. Brown when you placed him under arrest?
A. Where was he?

Q. Yes.

A. He was on the rear porch of an apartment at 3817 West End, I believe is the correct address.

Q. Did your investigation reveal that this was Mr. Brown's private residence?

A. Yes. We were told that was his residence.

Q. You and Detective Lenz was in Mr. Brown's residence waiting for him when he came home?

A. Yes, sir.

Q. You had been inside Mr. Brown's apartment?

A. Yes, sir.

Q. The fact of the matter is Detective Lenz was in-
71 side the apartment when Mr. Brown arrived, is that right?

A. Yes, sir.

Q. What was the first thing that took place between Detective Lenz, Mr. Brown and yourself when Mr. Brown came home?

A. We were in the apartment. There is a window and a door. Mr.—Detective Lenz was seated in front of the window watching the rear. I was sitting at the front door as if he would come up the front stairwell. After we were there for a while, Detective Lenz told me that somebody was coming up the back stairs. I walked out the front door through the hall and around the corner and I stayed there behind a door leading on to the back porch. At this time I heard Detective Lenz say, "Don't move, you are under arrest." I looked out. I saw Mr. Brown backing away from the window. I walked up behind him, I told him he is under arrest, come back inside the apartment with us.

Q. Did he come back inside?

A. Yes, sir.

Q. After you got inside of the apartment, what was the first thing that was said to Mr. Brown?

A. I asked him, "What is your name?"

72 Q. What did he say, if anything?

A. He gave us a different name. I don't recall what it is offhand.

Q. He did not say his name was Richard Brown?

A. No, sir. He did not.

Q. After he gave that different name, what was the next thing that was said by either you or Mr. Brown?

A. I don't recall exactly what the exact words were, but I do know that I had a picture of Mr. Brown, and I was looking at Mr. Brown and the picture and I asked him if this was you. And he didn't say anything.

Q. After that, what was said or done?

A. We told him that he was under arrest for the investigation of a homicide, he was coming into Area 4 to check to find out for sure if he was, in fact, Richard Brown.

Q. Were those your words, "You are under arrest for investigation of a homicide,"?

A. Or words to that effect.

Q. Did you mention the name of the deceased?

A. I don't recall if I did or not, sir.

Q. Did you hear Detective Lenz mention the name of the deceased?

73 Mr. CUSICK. I am going to object at this time as being irrelevant.

The COURT. Let him answer if he knows.

The WITNESS. A. I don't recall. I know we were working on the Corpus homicide. I don't know if the name was mentioned or not.

Mr. HOWARD. Q. After you showed Mr. Brown his photograph, he didn't say anything, did you or Detective Lenz say anything else to Mr. Brown while he was in the apartment?

A. I don't recall.

Q. As you left the apartment, what did you—when you first left the apartment where did you go?

A. We went down the front stairs and we went through a—this is West End Avenue, our car was parked out on Washington Boulevard which is about a half block south. We walked through a lot on to Washington Boulevard and got into the squad car.

Q. What part of the car did Brown get in?

A. Rear seat.

Q. Anyone get in the rear seat with him?

A. No, sir.

Q. Was he handcuffed?

A. I don't believe so.

Q. Did any conversation take place between you and
74 Mr. Brown as you walked from the apartment to the automobile?

A. No.

Q. Nobody said a word?
A. I don't think so, no.
Q. As you rode in the automobile down to the station, did anybody say anything?
A. I believe I asked him if his name was Richard Brown, and I believe I also asked him if he owned an automobile.
Q. What did he say when you asked him if his name was Richard Brown?
A. At first he said nothing, and then as we were getting to the station I told him that we would fingerprint him and that we would find out one way or another if he was, in fact, Richard Brown, and then he said, "Well, you know I am Richard Brown."
Q. That was as you were riding down to the station?
A. Yes, sir.
Q. Can you think of anything else that was said between you, Richard Brown and Officer Lenz as you were in the apartment and as you rode down to the station?
A. Well, I know that he was telling us about his radio in there, and how he knew—how he felt that
75 someone might be in the apartment.
Q. Anything else you can recall?
A. No, sir, I don't think so.
Q. After you arrived in the station, what was the first thing that was done?
A. We escorted him into the interrogation room at the west end of the station.
Q. What floor was this?
A. On the second floor.
Q. As you entered the station, did you say anything to anybody?
A. To anybody?
Q. Yes.
A. I don't believe so, no.
Q. Did you—when you went up to the second floor, did you speak to anybody as you took Mr. Brown up to the second floor?
A. No, sir.
Q. Did you speak to the sergeant up there?
A. No, sir, not at this time.
Q. All right. Now, you took Mr. Brown into an interrogation room. What happened after you got into the interrogation room?

A. Sat him down in a chair, walked into our command
76 office which is about ten, twenty feet away from the interrogation room, told the sergeant on duty who was there that night that we had Richard Brown in custody, got the file, homicide file that we keep in our file drawers, and we walked back into the room with the file.
Q. What happened after that?
A. We sat down. We told him, gave him his Constitutional rights to remain silent——
Q. No, no. Tell me what was said and what was done?
A. I walked into the room, sat down. There is a table in the room. Mr. Brown was on one side of the table, Detective Lenz and I were on the other side of the table. We opened the file, put the file down on top of the table. Detective Lenz said, "Before we start anything, I want to tell you of your Constitutional rights to remain silent." He listened all four points.
Q. Tell me exactly what Officer Lenz said and what he did. He sat down, opened up the file, then he said, "I want to warn you about your Constitutional rights," something to that effect, is that right?
A. That's right.
Q. Then Officer Lenz continued to talk, is that right?
A. As far as I know, yes, sir.
77 Q. What was the first thing that Officer Lenz said that you can remember?
A. "You have a right to remain silent."
Q. What was—when he said that, you have a right to remain silent, what did anybody else say, if anything, after that?
A. Nothing.
Q. What was the next thing that Officer Lenz said?
A. "You have a right to an attorney."
Q. What did Officer Lenz say or anybody else say in the room after he said you have a right to an attorney?
A. "That anything you say or write can be used against you at a later time in Court."
Q. What else—What else did Officer Lenz say or Detective Lenz?
A. "You have—if you can't afford an attorney, an attorney would be appointed for you. And an attorney can be present during any questioning during the statement." And then when

he was through he asked him if he understood everything that he had said. He stated that he did.

Q. After he said, "I understand everything you said——"

Q. Pardon me?

78 Q. After Mr. Brown said, "I understand everything that you said" speaking to Officer Lenz——

A. Yes.

Q. What was the next thing that Officer Lenz or Mr. Brown or you said?

A. We asked him if he would like to tell us about what happened, about this fatal shooting of Mr. Corpus.

Q. What did Mr. Brown say, if anything?

A. We told him that we knew of the incident in the pool room where a bullet was—gun was fired by Mr. Brown.

Q. What exact words did you use when you talked to Mr. Brown about firing a gun in the pool room?

A. "We talked to people that know you and were in the pool room when you fired a revolver into the ceiling of the pool room. The bullet was extracted from the ceiling of the pool room and also the bullets that were fired into the body of Roger Corpus were removed and they were presently in our crime lab being compared to see if they came from the same gun."

Q. What else did you or Officer Lenz say at that time?

A. He after we said that, Mr. Brown said, "Well, you know about the incident in the pool room." Then he went on

79 and he said, "I want to tell you the truth." He said, "I want to get it off my chest. The best thing to do is to tell the truth."

Q. Officer, did you or Officer Lenz or anybody else in the station in your presence tell Richard Brown what the punishment was if he was convicted of murder?

Mr. CUSICK. I will object to this form of this question.

The COURT. Sustain the objection.

Mr. HOWARD. Pardon me, your Honor?

The COURT. Sustain the objection.

Mr. HOWARD. Judge, we are trying to find out whether this man made an intelligent waiver of certain rights that he had, and I don't know how we can find it out unless we go into conversation that took place.

The COURT. This conversation about advising him what the

sentence is for murder, and so forth, doesn't accomplish that. You have any other reason for it?

Mr. HOWARD. Judge, I don't know if I can put it in a nut shell, but as his lawyer, I am trying to find out because I wasn't there as to what this man understood about what the officer was telling him before he made the statement. And we can't really know what he understood, how well—what the circumstances were unless we know how intelligent he

80 was at the time the officer warned him.

The COURT. I think you have asked this officer what he said. Now, what you are doing is negativing whether he told him what the sentences were. A police officer is not a Judge or a lawyer.

Mr. HOWARD. Judge, we are trying to get to, this is what I am trying to get to.

The COURT. Don't have to get to it. I know that. You don't have to get to it.

Mr. HOWARD. Is the Court now preventing me from asking the officer those questions?

The COURT. I sustained the object to the question.

Mr. HOWARD. Q. Did you, officer, take Mr. Brown before any magistrate or Judge after you arrested him on May 13th, some time after 7:00 P.M.?

The WITNESS. A. No. He appeared in Court the following morning.

Q. But prior to the time he made any statement to you concerning this death, you didn't take him before any Judge or magistrate, did you?

A. No.

Q. After he had initially made a statement to you and Officer Lenz and after he had signed that statement, you

81 did call the State's Attorney, didn't you, an Assistant State's Attorney?

A. Yes, sir.

Q. Did you tell State's Attorney Crilly when he arrived at the station that Mr. Brown had made a statement to you and had signed it?

A. Yes, sir?

Q. Officer, I show you what has been identified as People's Exhibit No. 1, and I believe that you have looked at it and stated that you recognize that document, is that right?

A. Yes, sir.

Q. I believe you said that that is the statement including the questions and answers that were put to Mr. Brown on May 13th, 1968, is that right?

A. Yes, sir.

Q. This was signed by Mr. Brown?

A. Yes, sir.

Q. I ask you to look at that document carefully, Officer. Does Mr. Brown state in that document anywhere that "I don't want a lawyer"?

Mr. CUSICK. Once again enter an objection, and I will stipulate we don't maintain that particular document has the rights enumerated in it. But the warnings were given orally before.

Mr. HOWARD. Again, if the Court please the State's
82 Attorney has had the document identified as being the statement that they hoped to introduce in evidence against this defendant during the course of a trial.

The COURT. Let him answer. I think it was sufficiently shown by the previous witness.

Mr. HOWARD. I want to be careful——

The COURT. It is redundant.

Mr. HOWARD. Very well, but I want to be sure the record is clear as to each one of the witnesses who take the stand.

The WITNESS. A. He was advised that he could have an attorney.

Mr. HOWARD. Q. No. That is not what I asked you. I say does that document state, does it say in that document that Mr. Brown said, "I don't want a lawyer"?

A. Those words are not here, no, sir.

Q. May I see the document again? Does that document say that you or Officer Lenz told Mr. Brown that anything he said could be later used against him in a Court of law or any other place?

A. Yes, sir, it is implied in there.

Q. Where does it say that?

A. "Question. You have been advised of your Constitional rights relative to not having to say anything and the fact
83 that you can have an attorney present at this time, is that correct?"

Q. That is not what I asked you. I asked you if that document stated that you or Officer Lenz told Mr. Brown that if—that any statement he made could be used against him? I am asking you if that statement is in that document?

A. The words that you are using, counselor are not in this statement.

Q. That is what I asked you. In that statement that you have there signed by Mr. Brown the questions that were put to Mr. Brown and answered by him, does that document state that "If you don't have funds to hire a lawyer, the State will furnish one for you here and now"?

A. No, sir, those words are not here.

Mr. HOWARD. No further questions.

The COURT. I have a question I want to ask you. Do you know when the defendant here was booked?

The WITNESS. A. When he was booked?

The COURT. Yes.

The WITNESS. The exact time?

The COURT. Yes.

The WITNESS. A. That would be on his arrival at the central detention. It would be on the arrest record. I don't have it personally, your Honor.

The COURT. Can you tell us at what stage of this inter-
84 rogation and his custody that he was booked? What stage did it occur? Was this before or after this document that you saw here, what is that People's Exhibit?

Mr. CUSICK. Respondent's Exhibit No. 1.

The COURT. No. 1. Was it after that?

The WITNESS. A. He was placed under arrest before this statement.

The COURT. That isn't what I asked. I asked you when he was booked.

The WITNESS. A. He was booked after this statement was taken.

The COURT. All right. Do you know whether he was booked before or after the State's Attorney took a statement?

The WITNESS. A. It would be after.

The COURT. After?

The WITNESS. A. Yes, sir.

The COURT. It would be some time during the morning of the following day when you took him into custody, is that right?

The WITNESS. A. That is correct.

Mr. CUSICK. One question, Officer. The booking——

The COURT. In other words—just a moment, there
85 was no formal charge placed against him until he was booked, is that right?

The WITNESS. A. I believe that is the system, yes, sir.

Redirect examination By Mr. CUSICK:

Q. Officer, he wasn't booked until he was brought to 11th and State?

A. That is correct.

Q. This would have been after any statement taken by Assistant State's Attorney John Crilly?

A. That is correct.

Mr. CUSICK. Nothing further.

Recross examination by Mr. HOWARD:

Q. Officer, while Mr. Brown was in the Maxwell Street Station prior to the time that he made this statement, was a lawyer brought to the Maxwell Street Station to defend him?

A. No, sir.

Q. Was a lawyer brought there after the first statement was made?

A. No, sir.

Q. Who called the Assistant State's Attorney?

A. I believe I did.

86 Q. Was any attorney there for Mr. Brown when the Assistant State's Attorney spoke with him?

A. No, sir.

Mr. HOWARD. No further questions.

Mr. CUSICK. No further questions.

The COURT. You may step down.

(Witness excused.)

Mr. CUSICK. The State at this time would offer in evidence Respondent's Exhibits No. 1 and No. 2 into evidence as Respondent's Exhibits No. 1 and No. 2. We would ask in the case of Respondent's Exhibit No. 2 that the defense counsel would stipulate that if court reporter Emmett Smith were called to testify he would testify that he truly and accurately transcribed the substance of the conversation at the time it occurred.

Mr. HOWARD. I will stipulate he would say that.

The COURT. Any objection?

Mr. HOWARD. Yes, I would object to the documents being received in evidence, because this is the very subject matter of the whole petition. Until after the Court has heard all of the evidence concerning these documents.

The COURT. I think you are quite right.

Mr. CUSICK. I will withdraw my offer at this time 87–100 and reserve it for a later time.

The COURT. All right.

Mr. CUSICK. With that, the State would rest.

The COURT. Okay.

Mr. HOWARD. Your Honor, I move at this time that the petition to suppress filed on behalf of the defendant be sustained. The basis of—or the grounds in support of my motion, if the Court please, I believe that the State has shown by its efforts to show that the statement was free and voluntary, I believe they have shown the Court that it was not a free and voluntary act.

(Thereupon arguments on motion to suppress were had.)

101 The COURT. Motion overruled.

Mr. HOWARD. Take the stand.

RICHARD BROWN, called as a witness on behalf of the Petitioner, having been duly sworn, was examined and testified as follows:

Direct examination by Mr. HOWARD:

Q. State your name, please.

102 A. Richard Brown.

Q. Where do you live?

A. 3847 West End.

Q. How old are you?

A. Twenty-two.

Q. Calling your attention to May 13, 1968, were you placed under arrest?

A. Well, yes.

Q. Where were you when you were arrested?

A. I was at Area 4 Homicide when I was arrested.

Q. Did you have occasion to come in contact with some police officers on May 13, 1968, before you went to a police station?

A. Yes, I did.

Q. Where was that contact made?

A. This was at my house at 3847 West End.

Q. What time of the day or night was it?

A. This was at 7:30 P.M.

Q. Where were you when you first saw the police officers?

A. I was standing on the back porch looking into my house.

Q. What was the first thing you saw?

A. I saw Officer Lenz pointing a snubnose .38 at my head and told me to hold it.

103 Q. What happened after that?

A. After that Officer Nolan ran out and he had his gun in his hand. He said, "Come on in." I walked inside and when I got inside then they asked me who I was and I didn't tell them my name.

Q . Don't tell me what you didn't do. Tell me what the officers said to you and what you said to them.

A. Well, he said, "Come on in inside." When I got inside he asked me who I was.

Q. You say he, who are you referring to?

A. Officer Lenz.

Q. All right.

A. He said, "You are Richard Brown, aren't you?" I said, "No."

Q. What did he say and what did you say after that?

A. He said, "Check his ID," and Officer Nolan went in my back pocket and came out with a wallet, and he said, "What were you doing here if you are not Richard Brown?" And I said, "I am looking for Richard Brown." He said, "You lying." He said, "You live here. Your landlady told us you live here." I said, "Well, no, I am not Richard Brown." So he found a few tickets I had laying in the house. He said, "Come on."

104 They taken me down the back stairs, through the alley to the car, put me in the car. He pulled up a picture and say, "We have been looking for you." He said, "We caught you sooner or later."

Q. Did the officer have a warrant for you?

A. No, he did not.

Q. Show you one?

A. No.

Q. Did he have a search warrant to search your apartment?

A. No, he did not.

Q. Did any conversation take place as you rode from the apartment down to the police station?

A. Yes, it did. Officer Lenz said that I was on five years probation. I told him he had the wrong Richard Brown. Officer Nolan said that, I had some traffic tickets on me, he said that I had a '66 Oldsmobile. I told him my friend had one, I didn't. So they drove me to Area 4 Homicide, taken me upstairs, and Officer Lenz taken me, there is a little booth like. It as a sergeant

sitting in there at a desk and there was another officer sitting on this side of the desk, and I was standing there with my hands behind my back, I was handcuffed, and he told the

105 sergeant, he said, "We picked him up." And taken me in a little room.

Q. Just a minute. When was the handcuff first placed on you?

A. The handcuffs were placed on me at the house. Officer Nolan placed the cuffs on me because Officer Lenz had the pistol pointing at my—I was facing him and he had the pistol leveled at my stomach.

Q. After you arrived at the station what did you say happened?

A. After I arrived at the station they taken me to the second floor into a little booth like, like I am in now, but only there was two desks in there and two police officers. Officer Lenz said, "Sarge we have got him. We picked him up." So he said—the sergeant didn't say anything. He walked over and looked, he said, "Take him in the room in there." And Officer Lenz taken me in the room. He sit me down. Then Officer Nolan came in behind me because Officer Nolan didn't come all the way to the sergeant's office where Officer Lenz and I was at.

Q. After you had been taken into the room what was

106 the first thing said or done after you got into the room?

A. The first thing was said to me when I came into the room was that they found out I had shot a gun in a pool room, and that the gun I fired in the pool room those bullets matched up with the bullets in the dead man. I told them that I didn't know anything about it. Then he said, "Well, we have eyewitnesses to you shooting the gun in the pool room." He said, "Plus we found your fingerprints in the dead man's apartment." I said, "What dead man?" He said, "Roger Corpus. You know him, don't you?" I said, "Yes, Roger is a good friend of mine." Then he turns around and says that his brother gives him my name along with a list of other names. This is how they come by me. Then he said after his investigation turns up the pool room incident, he said this is when he decided to come pick me up. After he picks me up and takes me down to the station and we go through this and then he tells me about I got all the evidence pointing at me and if I wanted to get it off my chest I should.

Q. What else was said after he said if you wanted to get it off your chest you should?

A. After he said this, then this is when I started
107 to tell him, give him a statement.

Q. Was anything else said to you before you started giving a statement?

A. No. After I mentioned the defendant Jimmie Claggett's name Officer Nolan got up, went out to get some pictures. He brought back a picture of Jimmie Clay, and he put the picture down in front of me. He says, "Is this the guy?" I says, "No, I never seen him before." He taken the picture out, and Officer Lenz came in the room with a typewriter. He started to typing the things I was saying, but at first I was telling him about all the people I knew that knew Roger. People I had seen up to Roger's house when I was there. I told him I had been a friend of Rogers since about 1962. I told him I knew his brother, his sister, as a matter of fact, I knew his family. I told him I wasn't the one that did it. So he said, "You got all the evidence on you, you are going to have to do something."

Q. What happened after that was said?

A. Well, he told me about his experience in the police department, about some lady——

Mr. CUSICK. Objection.

Mr. HOWARD. Q. When you say he who are you re-
108 ferring to?

The WITNESS. A. I am referring to Officer Lenz. Because wasn't—he and I was only two people in the room because Officer Nolan had taken the picture out and he, he didn't come back until after the statement was gave and signed, and then he came back, and when he came back he told Officer Lenz, he said, "I can't find those pictures of the guy in here." So he said, "Come on, let's go down to 11th and State." This was around 8:30. They taken me down to 11th and State. I sit down in a little chair while the lady goes through files, and she comes up with Jimmie Claggett's address as 384—no, 3832 West Harrison. And they asked me, "Did he live there?" I told them I didn't know. I knew he stayed around Monroe and St. Louis. So we went up there. This was about 9:00, 9:15.

Q. Let me ask you this. When you left the Maxwell Street Station to go to 11th Street to look at the pictures did somebody ask you to go?

A. Well, then—before we left he told me I would have——

Q. When you say he who are you referring to?

A. I am referring to Officer Lenz. He told me that I would

have to help him catch Jimmie in order to clear
109 myself.

Q. Is that what you were doing?

A. Yes, I was, because I knew I didn't have anything to do with it.

Q. Before you made a statement to Detective Nolan and Detective Lenz concerning your knowledge about this case did you understand that you had a right to have a lawyer present right then and there in the police station?

A. No. Officer Lenz told me that he would have me a lawyer down there, he was going to call me one, but the lawyer he called wasn't for me.

Q. He said he was going to call you one?

A. Yes, he said he was going to get on the phone and call a lawyer and when the lawyer came down he said he would either, he would either turn me aloose then but I would have to help him catch Jimmie.

Q. When you were around with Officer Lenz or Detective Lenz and Detective Nolan looking for Jimmie did you think at that time you were going to be charged and held for murder?

A. No.

Mr. CUSICK. Objection.

The WITNESS. A. He told me——

110 The COURT. Sustain what he thinks.

Mr. HOWARD. Q. Did somebody tell you that? That you were going to be charged with murder?

The WITNESS. A. No, he told me——

Q. You say he, who are you talking about?

A. I am talking about Officer Lenz. He told me he wasn't going to mention the pool room. He told me that flat. He told me, he says, "I am not going to mention that."

Q. When were you first told that you were charged with murder?

A. When the State's Attorney came. This is when I found out I was being charged with murder. But then on the way out the station to the paddy wagon Officer Lenz told me that I didn't have to worry, I would be a State witness in this case because Officer Nolan wrote it down on a piece of paper and slid it to the State's Attorney while the court reporter was there and he and Officer Nolan and the State's Attorney.

Q. Before you made your statement to Officer Lenz, Detective Lenz and Detective Nolan, did you tell either one of those officers that you did not want a lawyer?

Mr. Cusick. Objection. Leading.

111 The Court. What is the basis?

Mr. Cusick. Leading.

The Court. Sustained.

Mr. Howard. Q. On May 13, 1968, when you were arrested, taken to the Maxwell Street Station, did you know what the punishment was for the charge of murder?

Mr. Cusick. Objection.

The Court. Sustained.

Mr. Howard. Q. Did you know what the punishment was for manslaughter?

Mr. Cusick. Objection.

The Court. Sustained.

Mr. Howard. Q. Did you know what the punishment was for involuntary manslaughter?

Mr. Cusick. Objection.

The Court. Sustained.

Mr. Howard. Q. Can you remember or recall anything else that was said between you and the officers at the Maxwell Street Station prior to the time you made this statement? The first statement?

Mr. Cusick. Objection, asked and answered.

The Court. Read the question.

(Question read.)

The Court. Let him answer.

112 The Witness. A. Well, I can recall when I got down to the station Officer Lenz was telling me that I was not going to be charged with the pool room. But he told me that I would have to help him, he said, because the bullets he found in the pool room were the same in the body. He said, "All the arrows is pointing directly at you." I told him then that I didn't kill anybody. Then he said, "Well, you going to have to give me somebody who did." And this is when I told him about Jimmie Claggett, and this is when Officer Nolan gets up and gets the picture. Now, when they read this little card off to me this is after I started giving him the statement. And he told me then he said, "Do you want a lawyer?" He told me I wasn't going to be charged, after all, I didn't need a lawyer. I didn't know he didn't mean that I wasn't going to be charged with this murder. He told me flat, he said, "You are not going to be charged. All I want from you is a statement." "So when the State's Attorney come," he said, "We will see

what he has to say about it," and he say, "We will probably let you go then." He said, "But we are going to call you as a State witness if we catch this guy." And then Officer

113 Nolan come back in the room and said, "I can't find the pictures." And then this is when he taken me to 11th and State.

Mr. Howard. Q. Did you assist the officers in finding Jimmie Claggett?

A. Yes, I did.

Q. Was Jimmie Claggett also charged with murder?

A. No.

Q. Did you ever appear in this building with Jimmie Claggett?

A. Well, on the morning before 10:00 when I arrived here the State's Attorney came to me and he asked me to sign some more papers. I told him I wasn't going to sign any more papers until I got a chance to talk to somebody that was on my side. That is about as far as I can remember, back to the previous days of May 13th and May 14th.

Q. You did not sign the second statement, set of questions in the statement that was given to you by the State's Attorney?

A. No. When I talked to the Public Defender he told me that the——

Mr. Cusick. Objection.

Mr. Howard. Q. Where were you?

The Witness. A. I was in Judge Daniel Ryan's

114 court.

Q. Who was there?

A. State's Attorney Kelly and Public Defender Xenos. When I was advised of my rights I was in front of State's Attorney Oplatka and Public Defender Xenos advised me of my rights and at that time I decided what I had done down at the station was help the officers convict me of a crime.

Mr. Cusick. Object what he decided.

The Court. Sustained.

Mr. Howard. Q. When was the first time you were taken before any judge or magistrate after you were taken into custody at your home?

The Witness. A. May 14th.

Q. What time of the day or night was it when you first appeared before any judge?

A. Well, approximate time I couldn't tell you because it

was after court had started that morning. Estimate the time about 10:00 o'clock.

Q. The judge who you appeared before at that time did he tell you that you have a right to have a lawyer?

Mr. CUSICK. Objection.

The COURT. Sustained.

115 Mr. HOWARD. No further questions.

Cross examination by Mr. CUSICK:

Q. Mr. Brown, you remember telling State's Attorney Crilly that you had eight years of grammar school? Did you go to eight years of grammar school?

A. Yes, I did.

Q. Have three years of high school?

A. No, I didn't.

Q. I will show you what has been previously marked as People's Exhibit number 2 for identification, referring to page 3: "Q. And what is your education?" You want to read the answer there?

A. "A. I have eight years of completion of grammar school and three years of completion of high school."

Q. Well, is that a true statement or a false statement by you?

A. Well, you have some truth and some false mixed there simply because I completed the eight years of grammar school at Our Lady of Sorrows. I never went to high school.

Q. So the statement here "And three years comple-

116 tion of high school" is not true, is that correct?

A. No.

Q. You read and write the English language, is that correct?

A. This is true.

Q. From the time you arrived at the station until the time you left to go to Madison and Homan with the detectives were you aloud to drink any water or any coffee or smoke any cigarettes?

A. I had my own cigarettes.

Q. Were you smoking them throughout the evening?

A. My cigarettes, yes.

Q. Were you allowed to take a drink of water or were you drinking any coffee?

A. No. I didn't drink any coffee. I drank half a cup of water and that is when the State's Attorney came.

Q. At the time you were arrested you stated that Detective Lenz made certain statements to you regarding finding someone else?

A. Yes, he did.

Q. And you gave a written statement at approximately 9:00 o'clock in the evening to Detective Lenz and Detective Nolan?

117 A. At 9:00 o'clock?

Q. Yes. It was before 9:00 because we reached the station, it didn't take us no more than fifteen minutes to get to the station.

Q. Who was present when that statement was taken?

A. Officer Lenz and myself.

Q. Was one of the men typing?

A. Officer Lenz was typing.

Q. Who was asking the questions?

A. Officer Lenz.

Q. Lenz also?

A. Yes.

Q. He was both typing and asking the questions?

A. He didn't ask any questions. Officer Lenz was typing and he told me to tell him exactly what happened.

Q. He didn't ask any questions?

A. He didn't ask any questions.

Q. Prior to this time were you warned of your rights to have an attorney present?

A. Well, like I said earlier I mean he told me I wouldn't need one so I felt that he was telling me the truth.

Q. Did you at any time ever state to Detective Nolan

118 or Detective Lenz that you wanted to be a State's witness?

A. No. Officer Lenz stated that to me. As I was going to say earlier that he told me about some woman that he had put in a hotel on the north side. She was a State witness against her husband. I told him at that point if I turned State's evidence on somebody, I say, and I got away, I say, I am fixing to be killed. And he told me that——

Mr. CUSICK. I object to the last two-thirds of this answer, not being responsive.

Mr. HOWARD. He is trying to answer.

Mr. CUSICK. He is going into something else.

The WITNESS. A. You asked me——

Mr. HOWARD. Wait a minute.

Mr. CUSICK. Q. My question——

The COURT. Read the question back.

(Question read.)

The COURT. Sustain the objection. Strike out the unsolicited portion.

Mr. CUSICK. Q. Ask you again, did you ever tell Detective Nolan or Detective Lenz that you wanted to be a State's witness after you gave your first statement?

The WITNESS. A. No.

119 Q. Did you ever know or ever meet Detective Lenz or Detective Nolan prior to this date?

Mr. HOWARD. Object to that. Immaterial to the issues.

The COURT. Let him answer.

The WITNESS. A. Did I ever meet?

Mr. CUSICK. Q. Ever meet them or know them from anywhere prior to your arrest on May 13th?

A. No.

Q. Can you think of any reason why they would——

Mr. HOWARD. Objection.

Mr. CUSICK. Withdraw the question.

Q. You mentioned something was said about firing a shot in a pool room, is that right?

A. Well, I said Officer Lenz said it.

Q. Did you fire the shot in the pool room?

Mr. HOWARD. Objection.

Mr. CUSICK. Judge, it was brought out.

The COURT. What is the objection?

Mr. HOWARD. The objection, Judge, is not what he did, is not material to this issue. The issue is what, the circumstances under which he made a statement. He can talk about what conversation took place between he and the officers, but what

120 he did, what the officers accused him of certainly can't impose a burden upon a defendant to admit any type of crime in a court of law.

The COURT. Sustain the objection.

Mr. CUSICK. Q. Were you—what type of leniency were you promised by the detectives?

The WITNESS. A. Well——

Q. Said you would go free? Is that what they told you?

A. No, Officer Lenz told me that I would be a State witness in this case. And he also told me that when I got up here that it would be a deal made between the State's Attorney and the Public Defender.

Q. Did you know who the Public Defender was at that point? Did you know what a public defender was?

A. Did I know what a public defender was?

Q. Right.

A. Well, I knew that he told me that they were going to make a deal for me. This is all I was interested in.

Q. You knew what a State's witness was then, didn't you?

A. After he explained it to me, yes.

Q. In other words, State's witness would testify

121 against another defendant. You knew that? You understood that?

A. Yes. This is what he told me.

Q. You understood what a State's witness was?

A. Yes.

Q. Did you understand this before the statement or after the statement?

A. Well, I understood this during the statement.

Q. I see. Did you understand at any time or did you know the State—strike that.

Had you ever heard of a person giving State's evidence prior to this particular night?

A. No.

Q. Ever been in a courtroom prior to May 14th?

A. Of course I have.

Q. Ever been in a courtroom whereby you were charged with an offense of some kind?

Mr. HOWARD. Objection.

The COURT. Sustained.

Mr. CUSICK. Q. What were your duties at Schwinn bicycle?

The WITNESS. A. Well, at Schwinn Bicycle I was chief supervisor there. I worked 540 to 516 polishers; I was head man next to my Foreman on the third shift.

122 Q. Did you have any employees working for you?

A. Yes, I did.

Q. Approximately how many?

A. Three.

Q. What was the nature of your work over them?

A. The nature of my work was thirteen out of sixteen machines.

Q. Did you receive any training to run these machines?

A. No, self-educated.

Q. Self-educated. What kind of machines were they?

A. These were welders, polishers, grinders, scoffers, buffers, stay welders, benders.

Q. Does your work include any clerical or paper work?

A. No.

Q. Did you ever work anywhere else such as a place called Guffman in Niles, Illinois?

Mr. HOWARD. Object to that.

The WITNESS. A. No——

Mr. HOWARD. Just a minute.

The COURT. Let him answer.

The WITNESS. A. I have been working at Arnold Schwinn Bicycle Company since August 18, 1964.

Mr. CUSICK. Q. Were you employed last May 13th
123 at E. I. Guffman in Niles, Illinois?

The WITNESS. A. No. I have been employed at Arnold Schwinn Bicycle since August 18, 1964.

Q. I refer you to People's Exhibit 3, refer you to page 3: "Q. Where are you employed?"

"A. I am employed at E. I. Guffman at the present time."

Were you asked that question and did you give that answer?

A. I can't recall that because if I had been asked that I would simply give my social security number, my badge number, clock number.

Q. You also remember the question: "Where is E. I. Guffman?" And your answer: "They are located——"

Mr. HOWARD. Your Honor, the subject matter of this motion to suppress is the statement that the State's Attorney is now reading to the defendant. Now, he is violating the very thing that we are trying to keep out of the eyes and ears of the Court.

Mr. CUSICK. Your Honor, I am not going into the facts of the case.

The COURT. Matter of impeachment is what it is.

124 Mr. HOWARD. But you can't do it, Judge, on a statement, you can't impeach a witness by a statement that he has not vouched for. He has not vouched for this statement.

The COURT. Matter of weight.

Mr. HOWARD. But, Judge——

The COURT. Doesn't prevent it. It is a question of weight.

Mr. HOWARD. If he can go into that part of the statement in an attempt to impeach him why not go down to the other parts has to do with the case in chief?

Mr. CUSICK. I am making no effort.

Mr. HOWARD. But if you can go any place you can do it all. The subject matter of my motion is to suppress the statement.

The COURT. I wouldn't say that is a correct statement of the law, you can do it in part, you can do it all. You are—he wanted to put the whole statement in, you objected.

Mr. HOWARD. That's right. And I object to him asking any questions out of the statement.

The COURT. I will let him answer.

Mr. CUSICK. Q. At page 3 once again were you asked this question by Assistant State's Attorney Crilly: "Q. Where
125 is E. I. Guffman?" And your answer: "They are located at 1251 North Street in Niles, Illinois."

Recall being asked that question and giving that answer?

Mr. HOWARD. Judge, again raise an objection.

The COURT. Let him answer.

Mr. HOWARD. Let the record show this, Judge, that the statement—questions that are being put to the defendant at this time is beyond the scope of the direct examination. There was never anything said about his employment.

The COURT. This is cross examination. This is a matter of testing his memory, I presume.

Mr. CUSICK. Q. Do you recall giving that answer?

The WITNESS. A. No.

Q. Do you recall being asked: "What do you do at that plant?" And your answer: "Punch press operator."

A. At E. I. Guffman?

Q. Yes.

A. No.

Q. You did not—you never worked at E. I. Guffman?

A. I haven't worked any place but Arnold Schwinn Bicycle Company.

Q. One other point. Referring to Respondent's Ex-
126 hibit 1 for identification is this your signature at the bottom of both pages?

A. Yes.

Q. That is your signature. Were you physically beaten in any way that evening? The evening of May 13th?

A. No.

Q. Were you threatened by anyone?

A. No.

Mr. CUSICK. Nothing further.

565-219—74——5

Redirect examination by Mr. HOWARD:

Q. Mr. Brown, the State's Attorney asked you if Detective Lenz or Detective Nolan—strike that. Asked if you stated to Detective Lenz and Detective Nolan that you wanted to be a State's witness. Remember him asking you that?

A. Yes.

Q. You said that you did not say that?

A. No, I did not state it to him.

Q. Who was the first one mentioned something about a State's witness?

A. Officer Lenz.

Q. Specifically what did Officer Lenz say to you?

A. Officer Lenz told me that he would make me a
127 State's witness in this case. He told me after I had testified against this guy that I would get a deal from the State's Attorney and the Public Defender.

Q. Was that before you made a statement, before you made a first statement?

A. No, this was during the statement.

Q. During the statement?

A. This was during the typing of the statement.

Mr. HOWARD. No further questions.

Recross examination by Mr. CUSICK:

Q. Did you understand when Detective Lenz allegedly made this statement to you regarding a deal, did you understand what he meant by deal?

A. Well, he told me that——

Q. Well, no, just answer my question.

Did you understand what he meant by deal?

A. I am not sure.

Q. Then did you understand or did you not?

Mr. HOWARD. Objection.

The WITNESS. A. I am not sure.

Mr. HOWARD. He has answered the question.

Mr. CUSICK. Q. Well, then if you are not sure then
128 you didn't understand anything else neither, did you?

The WITNESS. A. I understood, see but you asked me a question that I can say yes or no to and I would be either lying or telling you the truth, and I am trying to give you the truth. You asked me did I know what he mean. I know what

he said and you asked me did I know what he mean. I am trying to tell you what he told me.

Q. At the time you were arrested the policemen asked you your name and you give them another name, is that right?

A. This is true.

Q. What was this name you gave?

A. Eugene Yates.

Q. You knew they were police officers at that time?

A. No, I didn't.

Q. Did they declare themselves to be police officers?

A. No.

Q. Did they show you a badge?

A. No.

Q. You were lying at that time, is that right?

A. I was lying?

Q. You were lying to the men you—when you gave them another name you were lying at that time, right? Your name is Richard Brown, is it?

129 A. Yes, it is.

Q. At the time you gave them another name you were lying at that time, right?

A. Yes.

Mr. CUSICK. Nothing further.

Mr. HOWARD. No further questions.

(Witness excused:)

130–131 The COURT. All right, motion to suppress the confessions is denied and overruled, and People's Exhibits, what are they? 1 and 2 you are offering?

Mr. CUSICK. Yes, sir.

The COURT. Admitted in evidence as People's Exhibits 1 and 2. What about a date here now?

* * * * *

132–292 PROCEEDINGS AT TRIAL

Cause called for trial before the Honorable Saul A. Epton, Judge of the Circuit Court of Cook County on January 14, 1970.

293 ERNESTINE E. CORPUS, State Witness—

Direct Examination by Mr. VAN ZEYL:

My name is Mrs. Ernestine E. Corpus. I live at 3126 West Monroe Street in Chicago. Roger Corpus was my son. On May 5, 1968 Roger was living with me.

We lived at that time at 3126 West Monroe Street on the

second floor. That building is an apartment building consisting of six flats.

As you walk into the building we live on the left side of the stairway. The door leading to the upstairs was on the right. My son lived directly over me.

* * * * *

294 Q. Calling your attention to May 5th, 1968, at about a quarter to 12:00 at night, or close to midnight, were you at home?

A. Yes, I was.

295 Q. And were you alone or with someone else?

A. I was there with my mother and my youngest daughter.

Q. What is your daughter's name?

A. Constance Corpus.

Q. What were you doing when you were home at that time?

A. We were just sitting in the living room looking at television.

Q. Where is the living room located with regard to the front of the building?

A. The living room is in the front of the building on the left.

Q. Calling your attention to about that same time, did you have occasion to see anybody enter your building?

A. Yes, I did.

Q. And was it one person or more than one person?

A. There was two young men.

Q. You say they were men?

A. Yes.

Q. Do you see either of those men in the court room at this time?

296 A. Yes, I do.

Q. Would you point to him, please?

A. This Richard.

Q. Which person are you referring to?

A. The young man in the green suit. (Indicating)

Q. Indicating for the record the defendant Richard Brown.

A. Yes.

Q. Had you ever seen him before May 5th, 1968?

A. No, not that I recall.

Q. What, if anything, did he and this other man do after they entered your front door?

A. Well, they were walking in the vestibule making a little noise, I guess, from the door opening and their footsteps. And there is glass in all of those doors where I could look out and see that somebody was in the vestibule.

Q. Is that when you saw the defendant?

A. Yes.

Q. Did they go anywhere after you saw them?

A. Yes. I kept waiting to see if they were going to ring my bell and he looked over the curtain that I have on the door and

297 I wondered who was that peeping in, so I went to the door and took a good look and he didn't ring the bell, and my daughter—when I remarked, I wonder what are they peeping in here for, my daughter, she went and looked and then they went upstairs.

Q. Do you know where they went upstairs?

A. Well, they went into my son's apartment because I could hear them walking just over my head.

Q. What time did you go to bed that night, Mrs. Corpus?

A. I must have gone to bed around 1:00 o'clock because——

Q. You have answered my question. Did you have occasion, before you went to bed or after you went to bed, to hear anything else in your son's apartment upstairs?

Mr. KITSOS. Objection. Leading, your honor.

The COURT. Overruled. You may answer.

The WITNESS. Yes, I could hear footsteps, somebody walking around. There was a little noise other than just walking but I didn't attach any importance to it.

Mr. VAN ZEYL. Q. What noise would that have been, if you know?

298 A. Well, it sounded like kind of a shuffling noise. Like they might have been dancing or—not a lot of noise.

Q. Did your son own a television set, if you know?

A. Yes, he did.

Q. Did he own any other types of—well, let's say like a hi-fi or record players?

A. Yes, my son was very musical, he had an electric organ, all kinds of hi-fi equipment and a television.

Q. Did you hear any music playing that night?

A. Well, I couldn't hear—I can hear him when he plays the organ. He had been playing the organ but not after 12:00.

* * * * *

299–306 I must have gotten up around 8:00 or 9:00 the next morning—Monday, May 6. Around 5:00 p.m. that afternoon of May 6. I spoke to Mrs. Johnson who occupied the second floor rear apartment. She lived to just the rear of my son's apartment.

After I talked to her we went upstairs to my son's apartment. When we got to my son's apartment we noticed music playing, and the door was opened about two feet wide.

(State's Exhibit No. 1 marked for identification, a photograph of the building.)

When I got up the stairs and in front of my son's apartment I walked it. I entered his dining room and looked in the kitchen. He was not there. The lights were on and the music was playing. I walked to the living room and saw him lying on the floor.

(State's Exhibits Nos. 2 and 3 marked for identification, photographs of the interior of the room.)

My son was 27 years old.

(State's Exhibits Nos. 4, 5, 6, marked for identification, photographs of the body.)

When I saw my son lying on the floor I noticed he was lying on top of his record albums. His feet were tied with electric white looking cords. My daughter Constance then called the police.

307 Q. About what time, if you know, were the police
308 called?

A. Well, they were called within a half hour of the time that they were up here.

Q. Did they arrive on the scene?

A. Yes, they did.

Q. About how long after you called them did they arrive on the scene?

A. They were there within five minutes, and they also called the Fire Department.

* * * * *

309 * * * * *

I did not notice if the police searched the apartment. They wouldn't let me go up there while they were there. After they left I searched the apartment.

Q. Did you find anything of your son's that was missing?

A. Oh, yes.

Q. What was missing?

A. Well, his credit cards and a lot of his clothing and his wallet, and, well, everything of any value small things.

Q. Did your son own an automobile?

A. Yes, he did.

Q. Did he carry keys?

A. Yes, his keys were missing, too.

Q. Do you know whether or not your son kept any money up in his apartment?

A. Well, I am sure he did.

Q. You don't know for certain, though?

A. Yes, I know he had to keep some money there.

Q. Do you know how much he had at that time?

A. No, I don't know the exact amount.

Q. Did you find any money at all in his apartment?

A. No, we didn't find any money at all.

Q. Was any money found on his person?

A. No.

310—311 When was the next time after May—the late evening hours of May 5th that you saw the defendant Richard Brown again?

A. I next saw him at the coroner's inquest.

Q. And was that about a month later?

A. Yes, it was in June.

* * * * *

312–315 Cross Examination by Defense Counsel:

I did not go out of my house on Sunday May 5, 1968. On Sunday May 5 possibly one or two o'clock in the afternoon I saw my son come down and go to the store to buy some groceries which he brought back. I did not see him any more that day but heard him playing his organ right above my head.

I do not know from my own knowledge what happened that night in my son's apartment before I found him there on Monday.

I talked with the police officers after they arrived. I talked with the police about the individuals I noticed in the vestibule and I told him I didn't know the names of the people who were in the vestibule.

316 * * * * *

Q. And you recall that it was Richard Brown that you saw in the vestibule?

317 A. Well, at the time I didn't know his name.

Q. But, in any event, you saw my client, Richard Brown, in the vestibule that night?

Mr. VAN ZEYL. Objection. Asked and answered.

The COURT. Overruled.

Mr. KITSOS. Q. Or who you now know to be Richard Brown in the vestibule that night?

A. Yes.

Q. And there was another individual with him at that time?

A. Yes.

Q. And you approached the glass to take a better look at these men, is that your testimony, ma'am?

A. Yes.

Q. Is your vestibule lit by an electric light bulb?

A. Yes.

Q. Was it on that night?

A. Yes.

Q. How much of the body of these men could you see? Could you see from their knees up?

A. No, no.

Q. What could you see?

318 A. The light is up high.

Q. Yes.

A. Right possibly even with the top of the curtain, because at that time the curtain didn't reach all the way up to the top, there was a space of maybe two inches above the top, and that's what I could see, actually, by the light.

Down further I was looking through the curtain, I could just tell what they had on, but I didn't see their feet.

Q. Could you see their waist?

A. Yes.

Q. From the waist up you could see them?

A. Yes.

Q. Could you see their hands?

A. No, I don't remember their hands.

Q. But if you had looked at their hands you would have seen them?

Mr. VAN ZEYL. Objection.

The COURT. Sustained.

Mr. KITSOS. Q. In other words, was there a clear—did you have a clear view of the upper part of these men's bodies as they were in the vestibule?

319 A. No, I had a clear view of his face because there was no curtain up by his face, and the light was right on his face.

Q. And the curtain, I take it, was on the side of your door?

A. Yes.

* * * * *

320 When I went to bed at 1:00, I had not heard any noises up to that time. When the individuals first went in I heard some noise and a little scuffling around, but then I went to the rear of the house and I didn't hear anything. After I went to bed at 1:00 I did not hear any noises of any sort because my bedroom was in the rear. I did not hear any pistol shots either before or after I went to bed.

I was home all day Monday, May 6. I got up around 8:00 or 8:30 in the morning and did not go out of the house. At about 5:00 Mrs. Johnson came down and the two of us went to my son's apartment.

321–327 CONSTANCE DELOACH, State witness testified as follows—

Direct Examination.

I reside at 3126 West Monroe. Ernestine Corpus was my mother. Roger Corpus was my brother.

On May 5, 1968 I was living at the same address. I was living on the first floor with my mother. I did not see my brother on May 5, 1968.

On May 5, 1968 near midnight I was in my mother's apartment in the living room watching television with my mother and my grandmother who was seventy years old. Near midnight I saw two men come into the vestibule. One of them was a very tall man who looked into the window and then went on upstairs. The defendant in this cause was the one who looked in the window and then went upstairs.

I had seen the defendant in this cause, Richard Brown before. We went to grammar school together. I did not recognize the other person with him.

Later on in the evening I heard walking noises in my brother's apartment, but it could have been anything because there are rugs on the floor.

I went to work on Monday, May 6, 1968. I arrived home from work that day at about 5:00 or 5:30. When I came in I met my mother and she told me something had happened to my

brother, he was upstairs on the floor. I went upstairs immediately.

When I entered his apartment he was lying flat on his stomach. I could see he was dead so I went downstairs and called the police. I noticed his arms were tied and his legs were tied and he had a rope around his neck and there was blood on the rug.

328–332 My brother kept identification on his person or in his apartment all the time. He also kept money and keys and things of that nature about his person in his apartment.

I think the police searched his person and did not find anything. I did not know if the police searched the apartment. After the investigation was carried out I searched his apartment. I did not find any money, his wallet, his identification or keys in his apartment.

My brother knew the defendant Richard Brown. I had seen him, the defendant, going up there previously.

Cross Examination by Defense Counsel:

When I saw Richard Brown the evening of May 5 going to my brother's apartment I thought this was just another one of a number of visits that he made.

Q. Did you ever, prior to May 5th, 1968, take an inventory of your brother's personal effects?

A. Would you explain that, please?

Q. Well, I'll put it to you this way. Prior to May 5th, 1968, did you see whether or not your brother had credit cards with him?

A. Yes.

Q. Did you see him on May 5th, 1968?

A. No.

Q. Did you see him on May 4th, 1968?

A. Yes.

Q. Where was that?

A. When—I think that was the time he came down that I saw him, he was going around emptying the garbage.

333–342 Q. He pulled his credit cards out and showed them to you at that time?

A. No, but he usually kept identification, his credit cards was in with his wallet, he kept a check book and—in with his driver's license, and he carried all these things with him when he would go to work.

Q. That is not the question I asked you, young lady. I have no further questions, your honor.

The Court. Thank you, very much. Do you have any questions.

Mary Johnson, witness for the State—

343–350 * * * * *

Arthur Corpus, State Witness—

Direct Examination by Mr. Van Zeyl:

My name is Arthur Corpus and I live at 3126 West Monroe in the basement apartment. Roger Corpus was my brother. On May 5, 1968, I knew a person by the name of Richard Brown.

On Saturday, May 4, I saw Roger Corpus. He was in good health. He had an asthmatic condition.

His military status was 4–F. My brother kept with him his driver's license, his car registration and credit cards and a social security card. He was single.

We went into my brother's apartment about two days after he was killed. On that occasion we did not find any identification, money or keys in his apartment.

On May 7, 1968 I spoke to police officers at nine in the morning in my mother's apartment.

I spoke to my mother and sister before I talked to the police. I talked to a plain clothes detective, Denson, on the 7th.

The next day, the 8th, I spoke to Detective Lenz and another detective, whose name I don't remember.

I furnished Detective Denson with the name of Richard Brown on the 7th.

Cross Examination by Defense Counsel:

On May 6, 1968 I was at work. On May 6, 1968 I was informed of my brother's death while at work.

351–355 I arrived home at about 6:00 or quarter after. There were police officers at the house, but I did not tell any of these police officers about Richard Brown. I have known the defendant, Richard Brown since 1959. During this time Richard Brown was friendly with my brother.

The last time I was in my brother's apartment prior to the day he was killed was about 3 or 4 weeks before that.

I have never been up in my brother's apartment when he had visitors. My brother did not smoke or sell marijuana.

Q. After you arrived at your mother's apartment on May 6th, 1968, you had a conversation with your mother, didn't you?

A. Yes, I did.

Q. She told you what she knew of this unfortunate, this terrible thing?

A. That's right.

Q. And the two of you did discuss it, didn't you, your mother and you?

A. My mother and my sister.

Q. And during these conversations between you and your mother and your sister, with the police officers in and about the apartment there, none of you suggested to the police officers that possibly Richard Brown was responsible for this man's death?

A. Nobody asked.

Q. That isn't the question I asked you, sir.

The COURT. The question may stand and the answer may stand.

Mr. KITSOS. Yes, your honor.

356 Q. Did anyone at that time tell the police officers that Richard Brown was the man who did it?

Mr. VAN ZEYL. Objection. How would anybody know?

The COURT. Already answered. Nobody asked. A new question.

Mr. KITSOS. Q. Do you know a person by the name of Claggett?

A. Yes, I do.

Q. What is his first name?

A. What every body calls him, Jimmy D.

Q. Do you know where he lives?

A. No, I don't.

Q. When was the last time you saw Claggett?

A. I haven't seen Claggett in about 6 months, prior to this, what happened here.

Q. Where was this?

A. I seen him on 5th Avenue.

Q. Where?

A. On 5th Avenue.

Q. Chicago?

A. Yes.

Q. When was that, what year was that?

The COURT. The witness said approximately 6 months prior to this incident.

Mr. KITSOS. Thank you, your honor.

Q. Was that the same Claggett that is named in this indictment?

A. Yes, it is.

Q. And that night or that morning when you told the police officers at 9:00 o'clock in the morning that you gave him some names, you also named Jimmy Claggett, didn't you?

357–381 A. No, I didn't.

Q. You just gave the name of Richard Brown?

A. Yes.

Q. No other name?

A. That's all.

Q. And prior to that time you told these police officers the name of Richard Brown, when last had you seen Richard Brown?

A. That Friday, the Friday before that. Thursday or Friday before that.

Did you see Richard Brown on May 5th?

A. No, I didn't.

Q. Or on May 6th?

A. No, I didn't.

Q. What time did you leave the apartment, your mother's apartment, on May 6th, 1968?

A. About 10 or 11:00 o'clock that night.

Q. Where did you go?

A. Went down to my apartment.

Q. And you went to bed?

A. Yes, I did.

Q. What time did you get up the next morning?

A. About 5:30, 6:00 o'clock.

Q. And what time did you talk to the police officers?

A. About 9:00.

Q. That's the time you gave Richard Brown's name to the police officers, is that right?

A. Yes, that's right.

Mr. KITSOS. No further questions.

EDWARD SHALGOS, called as a witness by the State—

382–390 * * * * *

DETECTIVE WILLIAM LENZ, State Witness—

Direct Examination by Mr. VAN ZEYL:

I am a detective assigned into Area 4 Homicide. On May 6, 1968 at about 6:00 p.m., I have been assigned to Area 4 Homi-

cide for the past 9 years. I received an assignment. I went to 3126 West Monroe Street.

I arrived at 6:30 or 6:40 p.m. There were other police officers present, and I spoke to Mrs. Corpus, mother of Roger Corpus and a sister of Roger Corpus and a Mrs. Mary Johnson.

When I entered the apartment of Roger Corpus I saw him lying on the floor in the front room. He was lying face down on the floor.

(State's Exhibits 7, 8 and 9 marked for identification.)

Mr. Corpus was fully dressed when we found him. He was lying face down with his head facing north. His ankles were bound by a cord. His hands were underneath the body when we first saw him and there were some cord around his neck as well as a portion of a bathrobe.

391–399 I also observed a wine bottle in the front room standing along side a hassock which was present. A pillow had also been removed from a portion of the couch. This pillow was standing along side a portable TV stand. The pillow had three holes in it, and one of the holes appeared to have a powder burn or mark surrounding the hole.

(State's Exhibit No. 10 marked for identification, photograph of TV stand and pillow.)

The cord was removed from the victim. The property was given to the crime laboratory.

(State's Exhibit No. 11, marked for identification, pieces or strands of cord.)

The cord which bound the victim's hands and ankles was an electrical cord. There were numerous electrical cords in the apartment. There was extensive hi-fi system in the apartment. The pillow with the bullet holes in it was sent to the crime laboratory.

(State's Exhibit No. 12 marked for identification, a pillow.)

After May 6th I had further conversation with members of the Corpus family. As a result of these conversations we were supplied with the name of Richard Brown, a man known as Henry, and a third individual, this would be a friend of Henry's. I don't recall the name. We subsequently placed Richard Brown under arrest.

400 * * * * *

Mr. VAN ZEYL. Q. What date was it you placed the defendant under arrest?

A. The 13th day of May, 1968.

Q. Where was it that he was placed under arrest?

A. 3845 West End Avenue.

Q. Do you recall what time of the day or night that would have been?

A. He was placed under arrest at 7:45 P.M.

Q. At that time, Detective, were you alone or working with somebody else?

A. I was accompanied by two other police officers, Officer William Nolan and Officer Robert Wasmund.

Q. What time of the day or night on May 13th, 1968, did you arrive at that location?

A. We arrived at that location at approximately 5:00 P.M.

Q. What, if anything, did you do after you arrived at

401 that location?

A. We concealed ourselves, Officer Nolan was in the hallway, this would be a hallway just outside of the apartment of Richard Brown. I was right in the apartment of Richard Brown. This would be facing the rear entrance to the apartment.

Officer Wasmund was down on the street side, this would be on the West End side at the front portion of the building.

Q. And where was the defendant when you first saw him?

A. He had approached the apartment from the alley. He ascended the stairs to the second floor—this an outside staircase—and was walking on a—it would be an entranceway, an open entranceway alongside the building approaching his apartment.

Q. What did you do after he approached his apartment?

A. I called to Detective Nolan that he was coming. As he walked up to the apartment Detective Nolan stepped out of the corridor in which he was located and informed the defendant that he was under arrest.

Q. What happened next?

402 A. We searched his person. We then transported him down to our vehicle, which was parked on Washington Boulevard, and we proceeded to Area 4, Homicide.

Q. And when you arrived at Area 4 Homicide where, if anywhere, was the defendant taken?

A. He was placed in an interrogation room. This would be an interrogation room located on the west side of the building, it would be the center room.

Q. Did you enter that interrogation room?

A. Yes, sir.
Q. Did you remain for the interrogation?
A. A portion of it.
Q. And then you left?
A. At what time? Specifically what time, sir? When we first arrived we did enter the interrogation room with Mr. Brown.
Q. Was there any conversation going on in the automobile?
A. Yes, sir.
Q. And who was doing the talking?
403 A. Mr. Brown asked why he was arrested and we informed him he was under arrest of investigation of a homicide, and he wanted to know why we had arrested him. We told him because of some evidence that we had relative to the case.
Q. Officer, did you have occasion yourself to advise the defendant of any rights?
A. Detective Nolan advised him of his rights at the time of his arrest on the second floor.
Q. Driving to Area 4 Homicide, who drove the automobile?
A. As I recall, I drove the car, sir.
Q. Where was the defendant seated in the car?
A. In the rear seat.
Q. Who was back there with him?
A. Detective Nolan.
Q. Was there conversation between the defendant and Detective Nolan?
A. There was.
Q. Now, when you got to the interrogation room at Area 4, was the conversation there between the defendant and Detective Nolan also?
A. Yes, sir, it was.
404 Mr. Van Zeyl. I have no further questions.
The Court. Thank you, Mr. Van Zeyl. Mr. Kitsos.
* * * * *
404a * * * * *
Cross Examination by Defense Counsel:
The wine bottle which I noticed in the apartment was dusted for fingerprints by the crime laboratory.
405 * * * * *
Q. Officer, did you find a gun on the defendant at the time you arrested him?
A. No, sir.

Q. Did you have a conversation with the decedent's mother when you arrived at the apartment you told us about?
A. Yes, sir.
Q. And did you have a conversation with Arthur Corpus, the brother of the decedent?
Q. Arthur Corpus gave you three names, did he?
A. As I recall, he originally gave us two names. On the specific day of the 6th day of May he gave us two names. I had more than one conversation with Mr. Arthur Corpus.
Q. On May 7th, the next day, did you have occasion to see Arthur Corpus again?
A. I don't recall. I could have, sir.
Q. Do you recall what day Arthur Corpus gave you the name of the defendant Richard Brown?
Mr. Van Zeyl. Objection. There is no evidence he
406 gave him the name.
Mr. Kitsos. I think there is, Judge.
Mr. Van Zeyl. I will withdraw the objection.
The Court. Thank you, very much. Answer the question if you can.
The Witness. No, sir, I do not recall the specific date.
The Court. The answer is I do not know. The next question.
Mr. Kitsos. Q. Did you have occasion to arrest one by the name of James Claggett in connection with this homicide?
A. Yes, sir.
Q. When was the date of that arrest?
A. As I recall, Claggett—I don't recall if it was the 13th day of May or the 14th, as it was very close to midnight, sir.
Q. Now, on May 6th, you had a conversation with Mrs. Ernestine Corpus, the decedent's mother, didn't you?
A. Yes, sir.
Q. At that time Mrs. Corpus told you, didn't she, that at approximately midnight or just before mid-
407 night on May 5th she had observed two men, didn't she?
A. She had observed two men, one being taller than the other.
Q. Did she tell you whether or not she could identify those men at that time?
A. The only description she could give was their clothing.
Q. She could give no description as to facial features, could she?

A. She did not see their faces.

Q. Did you recover a revolver in the apartment of the decedent?

A. Yes, sir.

Q. Do you know, Officer, if the defendant's finger-prints appeared on the bottle of wine that you recovered?

A. I do not have an independent knowledge of this, sir.

Q. Based upon your investigation, Officer, can you tell us with any degree of reasonable certainty whether the decedent died where you found him?

Mr. Van Zeyl. Objection.

408 The Court. Sustained.

Mr. Kitsos. Q. Now this stake-out of Richard Brown's apartment, you had gone there to arrest a man, is that right?

A. That's right, sir.

Q. And Richard Brown came up to his apartment and you in fact arrested him, Officer?

A. That's correct, sir.

Q. You advised him he was under arrest, didn't you?

A. Detective Nolan advised him he was under arrest.

Q. And the defendant Richard Brown submitted to authority, didn't he?

A. He did.

Q. And this took place on the second floor there?

A. That's correct, sir.

Q. And in your presence Officer Nolan and the defendant and yourself returned to the squad car?

A. That is correct, sir.

Q. During this time of proceeding down the stairs the defendant Richard Brown was asking you, "Why are you arresting me?" Didn't he ask you that?

409 A. He denied he was Richard Brown.

Q. It's a very simple question, Officer.

The individual was asking you why he was arrested, isn't that true?

A. No, sir, not at that time.

Q. Did he in the squad car inquire as to why you were arresting him?

A. In the squad care he inquired, yes, sir.

Q. And did you tell him why you were arresting him?

A. Officer Nolan informed him.

Q. Informed him what?

A. He was under arrest for investigation of a murder.

Q. In other words, you indicated to the defendant that you were going to charge him with murder is that right?

Mr. Van Zeyl. Objection.

The Court. Objection sustained.

Mr. Kitsos. I'll withdraw the question, your honor.

The Court. Very good.

Mr. Kitsos. Q. You advised the defendant at that time, or Officer Nolan did, one or the other, that you had a sus-

410 picion that he was involved in a murder?

Mr. Van Zeyl. Objection.

The Court. The word, "suspicion" was not used. Investigation of a murder, is what the detective said.

Mr. Kitsos. Yes, your honor, I'll abide by the court's ruling.

Q. In any event, you told the defendant that he was under arrest for investigation of murder?

A. Correct, sir.

Q. Did you indicate the name of the decedent at that time?

A. As I recall, Detective Nolan and the defendant were having a conversation in the back seat. I recall Detective Nolan telling him who the deceased was.

Q. And there was a conversation between Officer Nolan and the defendant in the back seat?

A. There was a conversation.

Q. To which you could hear?

A. Absolutely, yes, sir.

Q. And this conversation was about the accusation or the investigation of the murder, is that correct?

411 A. No, sir. The conversation, as I recall, was he wanted to know why he was arrested. Detective Nolan informed him. He wanted to know who he was accused of killing. Detective Nolan informed him of the deceased's name, Roger Corpus. The only other conversation I recall on the way in the car was relative to his ownership——

Q. Let me ask you this, Officer, ——

Mr. Van Zeyl. Judge, let him——

Mr. Kitsos. I have a right to interrupt, your honor.

The Court. Objection overruled. Ask another question.

Mr. Kitsos. Q. Let me ask you this, Officer. While you were sitting there in the squad car did you at any time hear Officer Nolan tell the defendant that he had a right to a lawyer?

A. That had been explained to the defendant——

Q. It's a very simple question, Officer. Will you answer it, please?

Mr. VAN ZEYL. I ask the witness be permitted to answer questions.

412 Mr. KITSOS. That's right, I am entitled to a direct answer to the question.

The COURT. When you gentlemen are through I would like to rule. The question was a simple question. Was Mr. Brown advised that he was entitled to have a lawyer at any time?

The WITNESS. Yes, your honor.

The COURT. The answer is yes, Mr. Kitsos.

Mr. KITSOS. Q. In the squad car, Officer?

A. Not in the squad car.

Q. Not in the squad car?

A. That is correct, sir.

Q. In the squad car did you hear Officer Nolan tell this young man that he had a right under the law to remain silent?

A. In the squad car?

Q. Yes.

A. No, sir.

Q. In the squad car did you hear Officer Nolan tell this young man that anything he said to Officer Nolan or yourself could be used as evidence against him?

A. In the squad car?

413 Q. In the squad car.

A. No, sir.

Q. Now, Officer Lenz,——

The COURT. Detective Lenz.

Mr. KITSOS. Q. Detective Lenz, Officer Lenz, how long were you, Officer Nolan and the defendant in the squad car?

A. I would say approximately 10 minutes, 15 at the most.

Q. Where did you go to?

A. We drove from the 3800 block west on Washington Boulevard to Area 4 Homicide.

Q. Did you make any stops in between?

A. No, sir.

Q. In the squad car Officer Nolan was questioning the defendant, isn't that true?

A. That is not true, sir.

Q. There was a conversation between the two individuals?

A. That is correct, sir.

Q. Your purpose in taking the man into custody was for an investigation, isn't that right?

A. Part of the investigation.

414 Q. And your investigation commences when you take the man into custody, doesn't it, officer?

A. Not necessarily so, sir.

Q. In this case it was such. Your investigation commenced just as soon as you took him into custody, isn't that true?

A. No, sir, it did not.

Q. What time did you leave—what area was that officer, you told us about that you went to with the defendant?

A. Area 4 homicide, sir.

Q. What time did you personally leave Area 4 Homicide that day?

A. Upon completion of my tour of duty. It would be approximately 4 or 5 A.M. upon the morning of the 14th.

Q. What time did you arrive at Area 4?

A. About 4:30 P.M. of the 13th day of May—of April.

Q. During all this time do you know where the defendant Richard Brown was?

415 A. I do and at 7:45 P.M. until approximately 2:00 A.M. on the 14th.

Q. Where was he?

A. He was in our custody.

Q. And where was this?

A. Area 4, Homicide.

Q. In an interrogation room?

A. Not for its entirety, sir.

Q. He was over there to be interrogated?

A. I wouldn't say to be interrogated. We were in the course of our investigation, part of the investigation we left with Mr. Brown, we returned to the area, we again left the area with Mr. Brown and returned at approximately 12:30 or shortly after midnight on the 14th.

Q. You had arrested this man?

A. Arrested whom, sir.

Q. Richard Brown, without a warrant, isn't that true?

A. That is correct, sir.

Q. You are familiar with the requirement that anyone arrested without a warrant be brought before a magistrate——

416 Mr. VAN ZEYL. Objection.

The COURT. Objection sustained.

Mr. KITSOS. Q. Did you go to 11th and State, the Central Police Station with this defendant that night?

A. Yes, sir.

Q. What floor did you go to?

A. As I recall, it would be to the fourth floor, I believe.

Q. That is the lockup?

A. No, sir.

Q. What is that, what floor is that?

A. The fourth floor in the section of the building in which we were located, which is the new section of the building, contains the arrest reports and photographs of offenders.

Q. What time were you there at 11th and State?

A. I would say at approximately—I could not approximate the time. It would be somewhere between the time of the arrest at 7:45 and 12:00 midnight.

Q. And on that day at that hour when you were at 11th and State at Central Police Station, you were aware, weren't you, that there was a magistrate sitting in room 1100 on that day or night?

417 Mr. VAN ZEYL. Objection.

The COURT. Sustained. Strike it.

Mr. KITSOS. Q. Did you go to the 11th floor of the Central Police Station at 11th and State that evening with your prisoner?

A. No, sir.

Q. Now I ask you a very simple question, Officer. Why not.

Mr. VAN ZEYL. Objection.

The COURT. Sustained.

Mr. KITSOS. That is a simple question, your honor.

The COURT. Ask another question.

Mr. KITSOS. Q. Was Richard Brown permitted to use the telephone while he was in your custody?

A. I don't recall if he did or not, sir. If he had requested it a telephone would have been made available to him.

Q. Officer, it's a very simple question. Was Richard Brown permitted to use a phone while he was in your custody?

A. I don't recall.

Q. Were you present when Richard Brown was induced—strike that question, please. Were you present when

418–419 Mr. Richard Brown signed some document or writing at the request of one of the police officers?

A. I don't recall Mr. Brown signing anything in my presence, sir.

Q. This man Claggett, is he in custody now, do you know?

Mr. VAN ZEYL. Objection.

The COURT. Objection sustained.

Mr. KITSOS. Q. This man Claggett that you arrested, Jimmy Claggett, is he the same Jimmy Claggett that is named in this indictment?

A. Yes, sir.

Q. Did you testify before the grand jury, Officer?

A. As I recall, I did.

Q. Officer, during your direct examination you made reference to a report.

I make a motion, your honor, to see the report.

420 * * * * *

The COURT. Proceed, gentlemen, with your cross examination.

Mr. KITSOS. Q. While you were in the squad car, Officer Lenz, did you hear Officer Nolan ask the defendant Richard Brown about the murder of Mr. Corpus?

A. No, sir.

Q. But a murder was discussed?

A. Not in the squad car.

Q. Now, this gun that you found in the Corpus apartment, did you inventory that gun?

A. Yes, sir.

Q. Do you recall what caliber that gun was?

A. .22 caliber.

Q. Where is that .22 caliber gun now?

A. To the best of my knowledge it is at the recovered property section at 1121 South State Street.

Q. During your investigation did you recover any

421 other weapons other than the weapon you told us about?

A. I believe the .22 is a starter gun, or it was a starter gun, but no other weapon.

Q. Where was the starter gun found?

A. The .22, the one gun was found under the mattress in the Roger Corpus bedroom. I believe there was a starter gun also found in the bedroom.

Q. What is a starter gun, will you tell the ladies and gentlemen of the jury?

A. It is a blank gun, it fires blank cartridges, used at races, and so forth, to start the event.

Q. Did you search Richard Brown's apartment the night you arrested him?

A. We made a cursory search of the apartment, yes.

Q. Did you find a gun in there?

A. In Richard Brown's apartment?

Q. Yes?

A. No, sir.

Q. Did you find any gun on Claggett when you arrested him?

422 A. No, sir.

Q. Did you make any other arrests of any other individual pursuant to your investigation?

A. No, sir, I did not.

Q. Did you find any marijuana in the course of your investigation?

A. No, sir, I did not.

Mr. KITSOS. No further questions.

423–426 * * * * *

Redirect Examination by the State:

We were not looking specifically for marijuana.

There were fingerprints found on a bottle of wine and these prints were dusted by the evidence technician, from the Chicago Crime Laboratory. I have no further knowledge of these items.

During our conversation with the mother of the decedent on May 6, she told us she was looking out of her front window, which faces out onto the porch area of her home. As I recall she was looking through two windows, an outer window and an inner window, and it was quite dark that night. Mrs. Corpus also wears glasses. She informed us she could see two individuals, one of whom she described as being quite tall. She described the clothing the men were wearing, that they knocked at the front door, she heard her son come down, admit them to the apartment and she could hear the people go upstairs and walking around in the apartment and was of the opinion that the persons who had entered were friends of her son, that they were at this time in the apartment with him.

After the defendant was placed under arrest he denied he was Richard Brown. I do not recall the name he gave us but it was a name of a friend of his he later informed us.

On May 6, in the Corpus apartment we conducted a search. We did not find any money or identification on the person of Roger Corpus. There was some change, I do not recall the exact amount, but it would be pennies that was

427–434 found in a bedroom. To the best of my knowledge this is the only money located in the apartment. I do not recall finding any identification on the person of the deceased.

A .22 caliber pistol was found underneath the bed or the mattress of Roger Corpus. Caliber of the bullet which was taken from the body of Roger Corpus was a .38 caliber.

Recross Examination by Defense Counsel:

I learned what caliber bullet was found in the body of Roger Corpus from the ballistics expert.

WILLIAM NOLAN, State's witness—

Direct Examination by Mr. VAN ZEYL:

My name is William Nolan. I am a police officer for the city of Chicago. I have been a detective for five and a half years. I am presently assigned to Area 4 Homicide unit, at 943 West Maxwell Street.

The first time that I did anything with respect to an investigation into the homicide of Roger Corpus was on May 13, when I reported for work. Pursuant to the assignment Officer Lenz and I went to 3845 or 47 West Maple. There is an apartment building at that address. We were told to meet two officers in front of the building. We went to the third floor, to the apartment of Richard Brown. The apartment was pointed out to us, and I remained in the hallway near the rear door. Detective Lenz was near the front of the apartment. Another detective with us remained downstairs. We arrived at the apartment somewhere between 4:30 and 5:00 p.m. We waited about 3 hours. At approximately some time between 7:30

435–438 and 8:00, * * * Detective Lenz called to me that somebody is coming up through the back. A few minutes later Detective Lenz stated it looks like this is Richard Brown so the man walked passed the doorway where I was at up to a window, and I stepped out on the porch behind him and placed him under arrest.

I asked him for his name and his identification. I asked him "Are you Richard Brown?" He said no he wasn't. I said "What is your name", he gave a name that I don't recall, but he stated that this was his name. I said you are not Richard Brown? He said No, I'm not.

Q. [Mr. Van Zeyl] Did you have anything in your possession, any photographs in your possession at that time?

A. Yes, sir, we did.

Q. How many photographs did you have?

A. We had two, I believe.

Q. And who were they photographs of, if you recall?

A. The photographs were of Richard Brown.

* * * * *

439–440 * * * * *

Mr. VAN ZEYL. Q. After the initial conversation which you had with the defendant after you placed him under

441–442 arrest about the name, did you have any further conversation with him at that time on the porch?

A. At that time on the porch?

Q. Yes?

A. Yes, sir, I told him, I says, "Well, you come into the station with us and we'll determine who you are. At this time I advise you you are under arrest for investigation of the homicide." At that time I also advised him of his constitutional rights to remain—

Mr. KITSOS. Objection as a conclusion.

The COURT. Sustained.

Mr. VAN ZEYL. Q. What did you tell him?

A. I told him at this time he had a right to remain silent, that he did not have to make any statement to me or anyone else, that also that if he did make any statement, anything he did say could be used against him at a later time in court.

I also told him he had a right to retain an attorney and the attorney can be present during any questioning or before any statement was given, and also I told him if he couldn't afford an attorney the State would provide one for him. I asked him if he understood all of this and he stated he did.

We then went to the car, Detective Lenz was driving the car and I went into the back seat with Mr. Brown.

As we were going into the station Mr. Brown asked me, "Why are you arresting me, why are you bringing me in?" I told him, "Your name is Richard Brown." He says, "No, my name is not Brown."

After that I told the man who is sitting with me

443–447 that we were bringing him in for the investigation of a homicide: He said, "What's homicide?" I said, That's murder." He said, "Who am I supposed to have murdered?" and I said, "a man by the name of Roger Corpus". He said, "I don't know anything about that."

By this time we arrived at the Area 4 parking lot, and as we were getting out of the car, I told the defendant we were going up to our office on the second floor. I said at this time we'll try to take fingerprints and the fingerprints will determine if you are Richard Brown. At this time he said, "Well, my name is Richard Brown. We then went into the interrogation room at the station. This was sometime between 8:00 and 8:30, probably close to 8:00 p.m.

Present were Richard Brown, Detective Lenz and myself. Defense counsel renews objection to admission of statements, and to the lack of a foundation that they were given voluntarily. Objection overruled.

Mr. VAN ZEYL. Q. Detective, what, if anything, did you say to him at that time and what, if anything, did he say to you?

A. I asked him, I said, "You are Richard Brown and you live over there in the apartment on Maypole Avenue." He said, "Yes, I did live over there." Then I told him, I says, "You are under arrest, as I told you before, for investigation of a homicide."

I said, "Now, Mr. Richard Brown, I want to repeat what I told you before." At this time I told him again, "You have a right to remain silent, you don't have to make any statement to us at all; anything you do say will be held against you probably at a later time and date." Also I told him he had a right to have an attorney and the attorney could be present before any questioning or any statement given. And

448–449 I also told him if he couldn't afford an attorney one would be provided for him and could be present before any statement.

He was asked if he understood all the four points and he stated he did. He said, "I want to tell you the truth. I had nothing to do with any murder."

So I asked him what he knew about the killing of Roger Corpus. Mr. Brown stated that on the night in question, sometime around midnight, he went over to Roger Corpus' apartment over on Monroe Street. He says as he arrived at the apartment in the lower vestibule he saw another figure as he

was coming up the stairs. He says as he got into the hallway and entrance he recognized the man that he identified as Jimmy Claggett. He said they were talking together and Richard Brown stated that at the time he, Richard Brown, had a gun in his possession and he asked Claggett if he wanted the gun. He said, "I have to get rid of the gun because of something I did."

Mr. KITSOS. Objection, your honor. Objection.

The COURT. Overruled.

Mr. KITSOS. Thank you.

The COURT. Proceed.

The WITNESS: He said, "I have to get rid of the gun because of an incident over on 5th Avenue." So he stated that he removed the shells from the gun, he handed the gun to Mr. Claggett and Claggett was examining the gun and he said Mr. Claggett told him, "I have $30. I'll give you that for the gun."

Brown said he handed the gun and Claggett says, "I want everything." He said with this he handed Claggett the shells to the gun.

450–451 He says then the two of them went upstairs and they knocked on the door of Mr. Corpus' apartment. He said that Corpus opened the door and there was a night chain, he opened the door to the length of the chain. He told him who they were and Mr. Corpus recognized them and he closed the door, took the chain off and opened the door for them.

Mr. Brown said they went into the apartment and Mr. Corpus got them some drinks and he says they were smoking a few sticks, meaning they were smoking a few marijuana, and they were sitting around just talking. He said he was sitting on a hassock facing Mr. Corpus and that Mr. Corpus was sitting a little to his rear, to his right rear.

He said while he was facing Corpus he heard what he thought was a click and he turned and he saw Claggett with the gun he had just sold him in his hand. And he asked Claggett, "What are you doing with the gun?"

He said Claggett was clicking the gun and he was putting the shells into the gun and he says, "Tie him up." He said, "Tie who up? What do you mean?" He said, "Don't argue with me, tie him up."

So Brown says he went and got some cord from either photograph or hi fi set or stereo set and he started tying up Mr. Corpus. He said he wrapped the cord around his wrists and his

feet. He said, "What are you going to do?" And Claggett told him, "Never mind, just tie him up, do what I tell you."

And he said he went and got some type of bathrobe and wrapped this around the head and face area of Mr. Cor-

452 pus. He said at this time Mr. Corpus started to struggle a little bit and Claggett told Corpus to hold still or he'll kill him. At this time Brown said that Mr. Claggett picked up a pillow and put the pillow over the gun and he fired a shot and he said he heard Mr. Corpus saying, "Oh, it burns, it burns," something like that.

The he said Claggett had the gun in his hand again and Brown attempted to take the gun out of Claggett's hand and he heard a second shot. He said, "Mr. Brown said at this time he ran to the door and ran out of the apartment and down the stairs. He stated as he was running down the stairs he heard a third shot.

He got out of the hallway downstairs on Monroe and he ran over to Albany and he was standing around the corner at Albany and Monroe for several minutes. A short time later he saw Claggett come up to him and Claggett asked him if he had gotten any money and Brown said no, he didn't get any money. So he says, "why did you shoot him?" and Claggett said, "Don't worry about it, nobody knows we are up there, the police will never find us."

So then he stated he walked from Albany and Monroe with Mr. Claggett, they went to the area of Fifth Avenue and Homan, and at this point there was a hotel over there and in the basement of the hotel is a restaurant, the Hoover Restaurant. They went in the restaurant and had something to eat and he stated he told Claggett he was worried about the gun, and he says, "Don't worry, we left no evidence up there, the police will never trace the shooting to us." He said, "If you are that worried about the gun I'll get rid of it."

453–454 And he said Claggett wanted to give Brown back the gun. Brown told him, "No, you bought the gun, it's yours, it's your trouble, you get rid of it." He says then after an hour or so they broke up and they went their separate ways.

Then he said he saw Claggett several times in between the time of the shooting and the time that we had him in the station and that each time he told Claggett he was worried that the police would catch him and Claggett kept telling him, "Don't

worry, the police will never find us because we left no evidence or clues or anything like that."

After this we asked Mr. Brown if he would give a formal statement to what he just told us to the State's Attorney's officer, where a State's Attorney would come out and take everything down in writing, and he said he would. He also said, "I can help you find Mr. Claggett and I want to help you do that." We said, we would take that into consideration, to help us find Claggett.

Detective Lenz and I then took Mr. Brown from our area and we went to 1121 S. State Street. At this time we tried to obtain a photograph of Jimmy Claggett. Before we went to 11th and State, after we left our area, Brown said he knew the area where Claggett hung out around Madison and St. Louis. We took a ride in that area, we drove around Madison and St. Louis and Homan and Monroe Street, we couldn't find Claggett and from there we went down to 11th and State. After we were unsuccessful in obtaining a picture we were on our way back to the station. We had already called the State's Attorney's office, and as we were going back to Area 4, Mr.
455–463 Brown said, "let's try again to see if we could find Claggett." Detective Lenz and I decided we would try another time. We went back down Madison Street to Homan, we went around the area, down towards St. Louis Street.

As I was driving the car at this time and as we approached the intersection of St. Louis and Monroe, several people were walking across St. Louis from the west side to the east side. At that time Brown was in the back seat, and he hollered out, "there's Claggett, grab him."

We stopped the car and placed James Claggett under arrest just a little before midnight and transported both Mr. Claggett and Mr. Brown back into Area 4 homicide. When we arrived at Area 4 homicide, Assistant State's Attorney John Crilly was there.

He talked to Brown and talked to myself and Detective Lenz. A statement was started somewhere around 2:00 in the morning in the presence of a court reporter. I was present during the taking of the statement.

State's Exhibit 14, marked for identification, the statement taken by Assistant State's Attorney John Crilly from Richard Brown.

Cross Examination by Defense Counsel:

The interrogation room where defendant was kept in custody did not contain a telephone.

The day the defendant was placed under arrest I was armed, and when the defendant was placed under arrest, my gun was drawn. The defendant was placed up against the wall and searched.

Mr. KITSOS. Q. After you searched the defendant did you discover a weapon on him, on his person?

A. [Officer Nolan] No, sir.

464–467 Q. You advised him he was under arrest, is that correct?

A. Yes, sir.

Q. Did you put handcuffs on him?

A. Yes, sir.

Q. Will you tell the ladies and gentlemen of the jury how you put these handcuffs on the defendant. Did you cuff him in front or in the back?

A. Behind his back.

Q. Behind him?

A. Yes.

Q. As he was cuffed, after he had been searched, then he proceeded down the stairs, did you not?

A. At this time, after he was cuffed, then he was notified of his rights.

Q. Incidentally, when you notified the defendant of his rights up there while he was cuffed in the back after you had searched him, was Officer Lenz there? Was he?

A. Detective Lenz?

Q. Lenz. Was Detective Lenz there?

A. He was not out on the back porch at this time. He was in a position where he could see him and he was covering him while I was out on the porch.

Q. He was covering him with a pistol, wasn't he?

A. I believe so.

Q. And he was standing right there, wasn't he, Officer Lenz?

A. He was in the approximate area.

I do not recall whether I told the defendant that he had a right to use the telephone. I do not recall whether he
468–469 made a telephone call at 4:00 in the morning after the statements were taken.

Mr. KITSOS. Q. When you made this arrest of the defendant Richard Brown, you picked up this man, you arrested him for questioning, didn't you, Officer?

A. Yes, sir.

470–487 * * * * *

The COURT. Proceed with your questions.

When we made the arrest of the defendant, our purpose of picking him up was for questioning him. Throughout all our conversations with Richard Brown; Richard Brown persistingly denied having killed Roger Corpus. At no time during our interrogation of Righard Brown did Richard Brown admit killing Roger Corpus.

The defendant was arrested on the 13th. He was formerly booked downtown on the 14th, the next day in the early morning hours. The arrest slip has the date of the 14th of May. A formal charge was filed before a magistrate the following morning of May 14. We arrested Brown at approximately 8:00 P.M., maybe a little bit earlier.

Redirect Examination by the State:

While the defendant never admitted shooting the deceased, he did admit tying him up.

Statement taken by Assistant State's Attorney Crilly was not signed by the defendant.

Recross Examination by Defense Counsel:

(Typewritten statement taken from Richard Brown by Detectives Nolan and Lenz.)

State's Exhibit 15 marked for identification.

Recross Examination by Defense Counsel:

JOHN CRILLY testified for the State—

Direct Examination:

My name is John Crilly. I am employed by the State's Attorney of Cook County. I have been so employed for
488–500 seven years. On May 13, or the early hours of May 14, 1968, I received a call at home by State's Attorney's Police. This was shortly after midnight. I went to Area 4, Homicide Headquarters.

When I arrived I talked to Detectives Nolan and Lenz. At that time I met and talked to Richard Brown.

I had a conversation with Mr. Brown alone and then another subsequent conversation with him with the court reporter and one of the detectives was also present. The court reporter commenced to take a statement at approximately 2:30 in the

morning. The statement was finished sometime after 4:00 A.M.

At the time we were at Area 4, after the statement, the notes had not been transcribed from Mr. Smith's shorthand notes into a typed form. Mr. Brown was willing to sign it but the hour was so late, that we decided it would be more expedient if Mr. Smith would return to the court and type up the statement. I believe Detectives Nolan and Lenz said they would have Mr. Brown over here and he agreed he would sign at that time.

Defense counsel renews objection to statements.

Cross Examination by Defense Counsel:

As I recall, I arrived at Area 4, Homicide about 1:00 in the morning, and I remained until after 4:00 in the morning.

I was probably shown the first statement taken from the defendant by the officers when I arrived, but I really don't recall.

I was at the Area 4, Homicide station for an hour or an hour and a half before exhibit 14, the second was taken from the
501–510 defendant by me. When I first arrived at Area 4, Homicide I informed Mr. Brown of his constitutional rights, and explained to him who I was, and asked him if he wanted to talk with me about this crime. He said yes. We then had a conversation about the crime.

In the presence of the court reporter, after I had interrogated the defendant for an hour and a half by myself, I then went on record as to advising him he had a right to a lawyer and to remain silent.

Redirect Examination by the State:

Defense counsel renews objection to statements, overruled. Statement read to the Jury.

"Re: People vs. Richard Brown, et al.

Statement of RICHARD BROWN taken in Detective Division, Area 4, 943 West Maxwell Street, Chicago, Cook County, Illinois, on Tuesday, May 14, 1968, at 2:30 o'clock, a.m.

Present: Mr. John Crilly, Assistant State's Attorney. Detective William Nolan. DDA–4 Homicide. Reported by E. Smith, Book No. 6807–8.

Mr. CRILLY. Mr. Brown, you know where we are, we are on the second floor in the interrogation room of Area 4 Homicide Headquarters. You know me, John W. Crilly. I am an Assistant State's Attorney, and this is Detective William Nolan, you know him, don't you?

511–512 A. Sir?

Q. You met Detective Nolan?

A. Yes, I have.

Q. And this is Emmett Smith. Mr. Smith is a court reporter from the State's Attorney's office and he is taking down what we are saying here.

A. Yes.

Q. You previously have been apprised of your constitutional rights?

A. That is correct.

Q. Now, you know that you have a right to remain silent?

A. Yes.

Q. You now know that if you choose not to remain silent, anything you say or write can and will be used as evidence against you in court, do you understand that?

A. Yes.

Q. And you have a legal right to consult a lawyer before any questioning and you have a right to have the lawyer present with you during any questioning, do you understand that?

A. I understand that.

Q. You not only have a right to consult with a lawyer before any questioning but if you lack the financial ability to retain a lawyer, a lawyer will be appointed to represent you before any questioning and you may have the appointed lawyer present with you during any questioning, do you understand that, Mr. Brown?

A. Yes, I do.

Q. Will you tell us your name, sir?

A. Richard Brown.

Q. What is your address?

513 A. 3847 West End Avenue.

Q. Is that an apartment or home?

A. Apartment.

Q. In what apartment do you live?

A. 302.

Q. Do you have a telephone there?

A. 638–8866.

Q. How old are you?

A. 21.

Q. And what is your education?

A. I have eight years completion of grammar school and three years completion of high school.

Q. Do you read and write the English language?

A. Yes, I do.

Q. Are you married or single?

A. Single.

Q. Where are you employed?

A. I am employed at E. I. Guffman at the present time.

Q. Where is E. I. Guffman?

A. They are located at 1251 North Street in Niles, Illinois.

Q. What do you do at that plant?

A. Punch press operator.

Q. How long have you been working for that company?

A. I started about a week ago.

Q. Where did you work before that?

A. Schwinn Bicycle, at 171 North Kildare. I was there from 1964, the 8th month, the 18th day up to Wednesday before last week, a Wednesday.

Q. With whom do you live at 3847 West End Avenue?

514 A. Just by myself.

Q. Mr. Brown, directing your attention to Sunday, May 5, 1968, prior to midnight, will you tell us where you were at that time?

A. I was at Roger Corpus' house.

Q. Where were you coming from?

A. Coming from the Golden Star Cocktail Lounge on Pulaski and Washington.

Q. How long had you been there?

A. Maybe an hour and a half.

Q. And where were you going?

A. I left home before I went there.

Q. What time did you leave home?

A. Around nine.

Q. And how did you go to Roger Corpus' home?

A. Well, Roger was a friend of mine. I had been to his home many times before May 5.

Q. Was that at 3126 West Monroe Street?

A. Yes.

Q. What time did you arrive at Roger Corpus' home?

A. Little after twelve, when I arrived there.

Q. And had you been—you said you were in a cocktail lounge before that?

A. Yes.

Q. Had you been in the poolhall on Fifth Avenue?

A. Yes, I have. That was earlier that week that I was there at the pool hall, not the same date.

Q. Not on May 5?

A. Not on May 5, I was in the poolroom I believe it was Thursday.

515–516 Q. When you arrived at Roger Corpus' house, is that an apartment?

A. Yes, it is.

Q. On what floor did he live?

A. Second floor.

Q. When you arrived at the entrance, what happened, if anything?

A. When I arrived at the entrance I noticed that there was a man standing in the hallway. He had a short tan jacket on and as I moved up the stairs I begin to recognize the features of the man. When I opened the door and walked in, hi, Jimmy, I said. He turned around and looked at me and said, what is going on?

Q. You recognized him?

A. Yes, I recognized him. Then the door buzzed.

Q. Who did you recognize him as?

A. Sir?

Q. Who was the man that you recognized?

A. James Claggett.

Q. Had you known him a long time?

A. Yes, I have.

Q. You started to say, you said hello and the door buzzed?

A. Yes, he turned and we both went in and stood there a minute and transacted the business of the gun.

Q. What do you mean by transacted the business of the gun?

A. He paid me $30 for a .38 revolver which I had been trying to sell.

Q. Had you told Jimmy you were trying to sell it before that time, was he aware you were trying to sell it?

517 A. Jimmy had not seen me before that time.

Q. Did you talk to him about trying to sell the gun when you met him in front of Roger Corpus' door?

A. At that time I asked, did he know anybody who would buy one and he said, what kind is it, and I went to describe it and I showed it to him. I took the bullets out of it before I gave it to him.

Q. What kind of a gun was it?

A. .38 revolver.

Q. Do you remember anything about the gun?

A. It has an owl on the handle, is all I remember.

Q. You don't recall the name of the gun?

A. I didn't see any name on it.

Q. What happened then?

A. Then after he took a look at the gun, spinned the chamber, and he asked for the shells, I said, what are you going to do? He said, you want to sell it? I said, yes, and he said, I have not got but $30. I said take the gun.

Q. You took $30?

A. I took $30 from him.

Q. Did you give him the shells?

A. Everything, yes, I gave him everything.

Q. What happened then?

A. We went upstairs and Roger was in the doorway. He said, just a minute, because he had a night chain on the door and he went and put on his pants and I believe it was a little jersey shirt or something and he came back and opened the door. He nodded to Jimmy. He spoke to me. I asked hiw, where is the drinks at?

Q. Had you known Roger a long time?

518 A. Yes, I have known him about thirteen, fourteen years.

Q. Had you often gone to his apartment?

A. Yes, I have.

Q. What would you ordinarily do?

A. We go up there and either he would have drinks and things for us to indulge in or marijuana or you know, this is where we go to sort of have a little get together, most of the fellows, when we had nothing else.

Q. What happened when Roger took the night chain off?

A. He opened and swung the door open with his left hand and he said, come on in. Jimmy went in first, he nodded to Jimmy. Jimmy sat in the front and I came in behind him. I talked to him. He closed the door and he locked it. Roger locked the door as we went to the front. We sit down and I said, give me a drink. He went and got a fifth of white port wine and he gave it to me. I offered Jimmy and he refused it. I started to drink and I asked him, where is the reefers at. He went and got them, came back. When he came back he gave him two.

Q. Two marijuana cigarettes?

A. One for Jimmy and one for myself. He took a brown bag and left the room.

Q. Roger did?

A. Yes, he left the room. I assume it was money in the bag.

Q. Had you ever seen Jimmy in Roger Corpus' apartment before?

A. Not to my knowledge, no, because Roger never spoke with people that would come to his place. He talked to
519–520 me mostly about business, things I would be doing. Other people he spoke about anybody else.

Q. Did Roger have a drink, too?

A. No, I offered him one. I was the only one drinking.

Q. What happened after Roger left the room with the brown bag?

A. After he left the room with the bag, Jimmy and I were sharing a cigarette. He came back, sat down on the couch. The marijuana had been smoked up. I had the wine bottle in my hand to take another drink when I heard the gun cock. I turned and looked to my right and I seen Jimmy.

Q. Did Jimmy have the gun?

A. He had the gun in his hands. Jimmy said, get the cord and tie him, you get a rope and tie him up. I said, man, what is wrong with you, are you losing your mind? He said, get the damn rope, man. I took a cord from the headphone and tied up his feet.

Q. You took the cord from a headphone?

A. The headphone, it fits over your ears.

Q. Is that for a stereo set?

A. Yes, it was. I taken it and tied his legs and stretched the cord around his hands and when I was tying his hands, I turned once more and I asked him, what is on your mind?

Q. You were talking to Jimmy?

A. Yes, I was talking to him and he just said, tie the mother fucker up before I kill him.

Q. Did Roger say anything?

A. Roger didn't open his mouth. He didn't say anything.

Q. Did you notice any change of expression on Roger Corpus' face?

521 A. The only expression I noticed was the expression when he was looking at the gun. The expression didn't change. He still had a frown on his face as I got another rag to

tie his mouth when Jimmy shot him one time. Then Roger bent over on me and said, it burns.

Q. Did Jimmy have anything else in his hands besides the gun?

A. He was shooting through the pillow. He shot one time through the pillow and I reached for his hands, like this, to pull his hand down to keep from shooting again and——

Q. You reached for Jimmy's hand to pull the gun away?

A. Yes, and then he moved my hand and shot again, the second time. Then I turned and I left then and on my way downstairs I heard another shot on the way out. I was by myself until I got to the corner. I heard Jimmy behind me. I turned and that was him behind me. He gave me the gun back. I broke it down and looked at it and there were three punctured shells. I taken the shells and threw them on the sidewalk, closed it back up and gave it to him, walked down Madison, from Madison and Albany up to Madison and St. Louis, got back up there and we were talking about what happened. Then he told me not to worry about it because they don't have any kind of evidence that we were there. I said, I am hungry, let's go to the Hoover, to have breakfast, we had two cheeseburgers apiece and some ham and egg and rice.

Q. Where is the Hoover Restaurant?

A. Located on Homan and Jackson.

Q. Did you have the gun at that time?

522–523 A. No, I didn't, Jimmy had the gun at that time.

Q. You said he gave the gun to you?

A. Yes, and we got on Madison and I gave him back the gun before we got to Madison, before we reached the corner.

Q. Did you have a conversation about the gun?

A. We had a conversation about the whole entire thing.

Q. What did he say to you and what did you say to him?

A. Well, he said to me that I should not worry about it, because didn't nobody know we done it, no people around, nobody heard a sound. I told him, the fingerprints were still there and I am as deep in it as you are. He said, man, he said don't worry about it. If anything happens, you ain't got nothing to worry about, just take the time like it is.

Q. When you gave the gun back, did he ask for it?

A. Well, when I taken the three shells out on Monroe and Albany, standing there under the tree, I closed the gun and he stuck it in his pants pocket and walked to the corner and

when we got there he gave me the gun and I said a few words, man, you bought it, man, it is yours, carry the trouble with you. We walked down Madison and all the way he constantly talked. I was listening. Things he was saying I could not begin to remember because he said so many things but these things I can remember, is that when we got to the Hoover Restaurant there, the first thing he said, was, don't turn State's evidence.

Q. He had the gun at that time?

A. He had the gun at that time, yes. When I last seen him, I seen him Saturday, this past Saturday and he had the gun then.

524 Q. On his person?

A. Yes, he showed it to me.

Q. You had breakfast at the restaurant, how long were you in the apartment with Mr. Claggett? How long were you up in Roger's apartment?

A. About an hour because Roger left. Roger left when he taken the brown bag outside. He taken it out and he stayed about twenty minutes, I would estimate outside and then he came and when he came back I started talking to him like I always do, you know, about different things and Martin Luther King and stuff and then it seemed like Jimmy just raised on the couch, put his arm up and I heard the gun click.

Q. Is that about 1:00 A.M. on May 6, that would be when Jimmy shot Roger?

A. Yes, I don't know the exact time. I don't know.

Q. Approximately about that time?

A. Yes.

Q. Then you went to the Hoover and you had breakfast, how long did you stay at the Hoover?

A. Around until after I finished breakfast, it was almost 5:00 o'clock.

Q. What happened then?

A. We left and went to one of Jimmy's friend's house down on Monroe, the building I showed you down there. That is where we went down there.

Mr. CRILLY. For the record, indicating Detective Nolan, that he indicated the building to Detective Nolan.

RICHARD BROWN. We stayed there.

Mr. CRILLY. Q. Do you remember that person's name?

525–526 A. No, I don't remember his name. I only know what apartment he is in, who he is, but his name I don't know.

Q. You and Jimmy went up there?

A. We went up there together. There is where I believe he had left the gun. I was in the front and he went in the back and when he came back out of the back, we left and went down on Jackson to St. Louis. He said, go cop a bag, man. I said, no, man, I am scared to, I am still thinking.

Q. What do you mean by cop a bag?

A. Marijuana.

Q. You meant, buy marijuana?

A. Yes.

Q. What is Jimmy's full name?

A. His full name is James Claggett, C-l-a-g-g-e-t-t.

Q. What is his address?

A. He told the officer his address.

Q. You don't know his address?

A. No, I know he stayed on Kedzie and he was staying on Madison. Where he stays, I could not say.

Q. Do you know if he works?

A. He does not work, he never worked a day in his life.

Q. Now the gun you sold Jimmy, how long had you had that gun?

A. I had the gun about three weeks.

Q. Had you done anything with that gun?

A. No, except for in the pool room.

Q. What happened there?

A. Well, we were shooting dice on the pool table and I had $40. They were shooting 2 and 2, 2 to fade and 2 to hit

527 and I was betting on everybody. The dice would come around my way and when it got to me I was broke, when they come to me. When I examined the dice, the dice were crooked. It was two fives on one. I knew my money was being taken. I pulled out the gun and shot one time in the ceiling, took my money back and left.

Q. When was that?

A. That was approximately, it was between Thursday and Friday.

Q. Prior to May 5?

A. Yes, that was before.

Q. About May 2 or 3?

A. This was—yes, I believe so, yes.

Q. What was the location of that pool hall?

A. 5th Avenue and Sacramento Boulevard.

Q. After you left, you went up to Jackson and St. Louis?

A. Yes, he said, why if you are scared, come hide with me. I said, no, the further I get away from you, the better off I will be because you got me in a whole lot of shit. He said, don't be worried. If they ain't got the gun, they can't prove anything. So I said, Okay. We walked down the street a little more and talking. We went to the park, sit in the park and talked and went over the lounge on Homan and Lake that morning, had two beers and I said I was getting ready to go because it was getting around nine o'clock. I got home almost ten.

Q. You left Mr. Claggett about 9 in the morning?

A. Monday morning.

Q. Did you have any further discussion about the shooting at a later date?

A. Yes, I did.

528–540 Q. When was that?

A. This was that following Wednesday.

Q. Where did you see him?

A. I seen him down on Madison and Albany that time. I came down there to—no, Madison and St. Louis. I came down. I wanted to talk to him. I was worried. I told him, and he said, man, you don't have anything to worry about. These police are stupid. Look at these people that they stick up. They ain't caught them. I said, okay, as long as you feel like that. I said, remember one thing, you shot the man. I did not shoot the man. He said, I am not worried about it. That was it.

Q. Was that the last time you talked to him?

A. No, I talked to him Saturday again.

Q. Where was this?

A. This was at My Sin Lounge. I came in and he was next to the Seeburg in a booth.

Q. Where is My Sin located?

A. I don't know the address, Madison and Albany.

Q. He was next to the Seeburg, the juke box?

A. Yes.

Q. What did you say to him?

A. I walked in the place. I said, Jimmy, I am getting nervous. The first thing he said, come on, get high, don't worry about it.

Q. What happened then?

A. Well, we went on and smoked marijuana. Then I stayed there about an hour and a half with him, maybe two hours. I left and told him I was going home. I didn't feel well. I listened to the radio.

Q. Did you see the gun at that time?

A. No—yes, I did see the gun. Yes, I did. I seen the gun on his side because when he stood up, I said,

* * * * *

541–565 Stipulation between State and Defense Counsel, that a pillow found in the deceased's apartment had three perforation bullet holes in it and these holes indicated the muzzle of the weapon was in contact with the pillow at the time the weapon was fired.

Stipulation between the State and Defense Counsel that certain fingerprints that were lifted from the apartment of Roger Corpus were compared with the prints taken from the body of the deceased and those prints were in fact the prints of Roger Corpus.

Stipulation between the State and Defense Counsel that a .38 caliber slug recovered from the ceiling of a pool hall located at 3011 West 5th Avenue was a wiped bullet, meaning that the sides are wiped clean therefore it was not ballistically comparable to any other bullets, specifically the bullets taken from the body of the deceased.

* * * * *

556–568

The State rested its case in chief.

The defendant entered the following evidence.

LOLA MAE BROWN, called as a witness on behalf of the Defense—

Direct Examination:

My name is Lola Mae Brown. I am the mother of the accused.

On May 13, 1968 I went to bed at 10:00. My son called me at 4:00 a.m. in the morning. He said he was in a police station.

569 Cross examination by the State:

ANNIE SCOTT, called as a witness on behalf of the Defense—

The Defense rests.

Closing Argument by the State.

Closing Argument by the Defense Counsel.

Closing Argument by the State.

The jury was instructed.
Guilty as Charged.
Judgment entered on the verdict.
Oral Motion in Arrest of Judgment made and denied.
Oral Motion for a New Trial denied.
Hearing in Aggravation and Mitigation held.
The Court sentences the defendant to a term in the State Penitentiary of not less than 15 nor more than 30 years.
Certificate of Official Shorthand Reporters.
Certificate of Clerk.

Docket No. 43349—Agenda 1—November, 1973

THE PEOPLE OF THE STATE OF ILLINOIS, APPELLEE,
v. RICHARD BROWN, APPELLANT.

OPINION

Mr. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Richard Brown, was found guilty of murder by a jury in the circuit court of Cook County and sentenced to not less than 15 nor more than 30 years in the Illinois State Penitentiary.

Defendant and Jimmie Claggett were charged in a four-count indictment with the murder of Roger O. Corpus. At approximately 5:00 P.M. on May 6, 1968, Corpus's body, his ankles bound with white electric cords, was discovered lying on the floor of the living room in his apartment. The door to the apartment was open, lights were on, and music was playing, presumably on a radio. The deceased's wallet, credit cards and much of his clothing were missing.

As grounds for reversal defendant contends first that the trial court erred in denying his motion to suppress two statements, one made to the arresting police officers, and the other to an assistant State's Attorney. He argues that his arrest was unlawful in that it was made in his home, at night, without a warrant, after forcible entry by the police and that there were no exigent circumstances shown which justified the failure to seek a warrant for his arrest. He contends further that the statements taken from him following his arrest were obtained prior to his being taken before a magistrate, that they are "the products of the unlawful custody" and should have been suppressed and excluded from introduction into evidence.

The People contend that at the time of defendant's apprehension the arresting officers had reasonable grounds to believe that he was implicated in the murder and that the arrest without a warrant was, therefore, lawful.

The testimony adduced at the hearing on the motion to suppress shows that on May 13, a week after the murder, two detectives went to defendant's apartment, that one of them concealed himself within the apartment and the other concealed himself outside the apartment. The entry into the apartment was accomplished in defendant's absence and without a warrant. After they had waited for approximately three hours defendant appeared, and Detective Lenz greeted him with drawn revolver and placed him under arrest.

In support of their contention that the police officers had probable cause for defendant's arrest, the People rely principally on the testimony of the deceased's sister, Constance DeLoach. The record, however, shows that Mrs. DeLoach testified, not at the hearing on the motion to suppress, but at the trial, and there is no evidence that the police, at the time of the arrest, were possessed of knowledge of the matters to which she testified. The deceased's brother testified that he had given
defendant's name to the police on May 7, but made
571 no suggestion that defendant was responsible for the death because "nobody asked." Later, apparently on May 9, the police were told that on the day of the murder defendant had been seen in the building where the deceased lived.

Upon review of the record, we conclude that the testimony fails to show that at the time of his apprehension there was probable cause for defendant's arrest, that his arrest was, therefore, unlawful, and we consider next the question whether the statements were the product of the illegal arrest and, therefore, improperly admitted into evidence.

The People contend that even assuming that defendant's arrest was illegal, his statements were voluntarily made after he was fully and properly advised of his right to remain silent and of his right to have an attorney appointed to represent him and to have him present during questioning, and that the giving of the *Miranda* warnings (*Miranda* v. *Arizona*, 384 U.S. 436) served to break the causal chain so as to sufficiently attenuate and dissipate the taint of the unlawful arrest. (*Wong Sun* v. *United States*, 371 U.S. 471.) They argue that his statements did not result from his arrest but rather from the defendant's realization that, even from the facts already known to police, he was implicated in the killing and that he wanted it known that he was merely a bystander and that Claggett was the actual killer.

The testimony adduced at the hearing on the motion to suppress shows that following his arrest defendant was taken to an interrogation room at the Maxwell Street station. Officer William Lenz testified that defendant was advised of his constitutional rights and stated that he understood them. Officers Lenz and William Nolan "had a conversation with" defendant relative to the slaying of Corpus after which defendant agreed to give them a statement. A two-page statement was taken and Officer Lenz testified that the statement "bears the signature of Richard Brown." This statement, however, is not included in the record and no issue is raised concerning it in this appeal. After this statement was taken the officers took the defendant to the Madison and Homan area in an effort to find Claggett. They did not find Claggett and went to the identification section of the central police station to obtain a photograph of him. They returned to the area where they had sought Claggett and found and arrested him. Following a brief conversation with Claggett the police officers talked briefly with defendant and then called an assistant State's Attorney. The assistant State's Attorney arrived at 2:00 A.M. and talked with defendant for approximately 25 minutes. During this period a court reporter arrived and the assistant State's Attorney took
a question-and-answer statement which was transcribed,
572 but when it was presented to defendant at approximately 4:00 A.M. he refused to sign it. Over objection the circuit court permitted the statement to be read to the jury and it was then, again over objection, offered and admitted into evidence. Contained in this statement are explicit *Miranda* warnings given the defendant by the assistant State's Attorney and defendant's responses indicating that he understood them. The second statement which defendant contends was erroneously admitted was introduced into evidence in the testimony of police officer Nolan who related to the jury what was told him by defendant during interrogation which preceded the taking of the question-and-answer statement. Both Officers Lenz and Nolan testified that defendant had been advised of his constitutional rights.

From our examination of the record, in the light of the circumstances shown by the testimony, we conclude that the giving of the *Miranda* warnings, in the first instance by the police officer and in the second by the assistant State's Attorney, served to break the causal connection between the illegal arrest and

the giving of the statements, and that defendant's act in making the statements was "sufficiently an act of free will to purge the primary taint of the unlawful invasion." (*Wong Sun* v. *United States*, 371 U.S. 471, at 486.) We hold, therefore, that the circuit court did not err in admitting the statements into evidence.

Defendant contends next that even if the statements were properly admitted into evidence, they were exculpatory and he was not proved guilty of murder beyond a reasonable doubt. In the statements defendant admitted that he was present in the deceased's apartment, that at Claggett's direction he tied the deceased's hands and feet and although he stated Claggett fired the fatal shots, he had sold him the pistol earlier that evening. The evidence is clearly sufficient to sustain the conviction. *People* v. *Nowak*, 45 Ill.2d 158.

Defendant contends next that the trial court improperly admitted evidence of an unrelated criminal offense. The evidence of which he complains was contained in his statement and was in explanation of why he had sold the gun to Claggett. This was admitted in the course of proving what defendant had said to the police and what he had told the assistant State's Attorney, and under the circumstances shown its admission into evidence was not error.

Finally defendant complains of the court's refusal to give a tendered instruction on circumstantial evidence (IPI Criminal No. 3.02). The People tendered, and the court gave, an instruction in the form of IPI Criminal No. 3.02 but without the second paragraph. Obviously the proof of guilt was, in part, defendant's own statements, and with direct evidence of his participation in the crime, the trial court correctly refused the tendered instruction.

In the absence of prejudicial error, the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

573 In the Supreme Court of the United States

No. 73-6650, October Term, 1974

RICHARD BROWN, PETITIONER

v.

ILLINOIS

On petition for writ of Certiorari to the Supreme Court of the State of Illinois.

On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in *forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

OCTOBER 21, 1974.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-6819

RICHARD BROWN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(Or Petitioner For Writ of Certiorari
To The Supreme Court Of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

NO. 73-6650

RICHARD BROWN,
Petitioner,
vs.
PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

OPINION BELOW

The opinion of the Supreme Court of Illinois is set forth at 56 Ill. 2d 312 (1974).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner relies on the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

QUESTION PRESENTED

Does the giving of Miranda warnings and other intervening sufficiently attenuate the statement from the illegal arrest so as to dissipate the taint?

STATEMENT OF THE CASE

The facts of the case are adequately set forth in the Petition.

REASON FOR DENYING THE WRIT

THE PETITIONER'S VOLUNTARY STATEMENTS WERE NOT TAINTED BY HIS UNLAWFUL ARREST AND WERE PROPERLY ADMITTED INTO EVIDENCE.

The petitioner contends that statements he gave to the police, implicating him in the murder, should be suppressed because his arrest was found to be unlawful. Such a position is without support in precedent or policy.

In Wong Sun v. United States, 371 U.S. 471 (1963), this Court held that a statement given to police officers after Wong Sun had been released from an illegal arrest was admissible against him, "the connection between the arrest and the statement had become so attenuated as to dissipate the taint. (Nardone v. U.S., 308 U.S. 338 (1939))". Wong Sun at p. 491. The principle that statements derived from an unlawful arrest could be admitted into evidence was thus clearly stated and the standard for the determination is the extent of the presence of a connection between the unlawful arrest and the statements.

The federal Courts of Appeals and state supreme courts have dealt with this situation many times since the decision in Wong Sun and have almost always approached the problem in the same way and reached the same conclusion. The totality of circumstances surrounding the statement has consistently been found to be the primary criterion in determining admissibility. Most importantly the voluntariness of the statement is considered. See for example, Alexander v. U.S., 390 F. 2d 101 (5th Cir. 1968); State v. Arruda, 317 A. 2d 437 (R.I. 1974); Bowers v. Texas, 507 S.W. 2d 785 (Tex. 1974); Mulligan v. State, 10 Md. App. 429 (1971); State v. Funchess, 179 S.E. 2d 25 (S.C. 1971); People v. Briggs, 36 App. Div. 2d 790 (N.Y. 1971); State v. Hooper, 25 Oh St. 2d 59 (1971). Also, the proximity to the time of arrest and intervening occurrences are important factors. (See for example, Beard v. Alabama Bd. of Corrections, 413 F. 2d 455 (4th Cir. 1969) (confession after several hours of custody following illegal arrest was admissible); Phelper v. Decker, 401 F. 2d 232 (5th Cir. 1968) (statements made 2 1/2 hours after arrest were held to be admissible); Commonwealth v. Maroney, 348 F. 2d 22 (3rd Cir. 1965) (confession after 5 days of continuous custody and consultation with attorney); Commonwealth v. Daniels, 317 A. 2d 237 (Pa. 1974); State v. Newel, 462 S.W. 2d 794 (1971). Some cases have specifically held that Miranda* warnings alone are sufficient to remove the taint of an illegal arrest. State v. Arruda, supra; Bowers v. Texas, supra; State v. Funchess, supra; State v. Hooper, supra; People v.Brown, 56 Ill. 2d 312 (1974). Only two state courts have adopted an absolute rule forbidding admission of statements following unlawful arrests. People v. Moreno, 491 P. 2d 575 (Colo. 1971); Bynum v. State, 490 P. 2d 531 (Okla. 1971).

The only case in the Supreme Court on this issue since Wong Sun was Morales v. State of New York, 396 U.S. 102 (1969), which case does not lend support to petitioner's view. The case never dealt with the actual issue of whether or not the confession could be admitted. In that case, this Court found that the confession was voluntary but remanded to determine whether the arrest was lawful. The opinion never fully discussed the issue of whether the confession should be admitted. This is evidenced by the fact that the Morales case never even mentioned the Wong Sun decision.

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* Miranda v. Arizona, 384 U.S. 436 (1966)

This limited examination cannot be said to change the clear standard set forth in Wong Sun and followed by almost every state and federal court.

Even considering the Morales case on the merits, it is not similar to the case at bar. In Morales, the defendant was illegally arrested and confessed after only 15 minutes. The contemporaneousness of the confession with the arrest is a ground for distinguishing that case from the present one if indeed the confession in the Morales case was tainted by the illegal arrest. It is clear that the standard set by this court, allowing for the dissipation of the taint of an illegal arrest from a subsequent voluntary confession has been uniformly and properly applied by the lower state and federal courts. The decision of the Illinois Supreme Court in the present case was also consistent with the law as stated by this Court in Wong Sun.

The admission of a voluntary confession after an illegal arrest suffers no constitutional infirmity. The Fourth and Fifth Amendments embody separate and distinct rights. This Court has held that the Fifth Amendment guarantees to the criminal defendant a fair trial while the Fourth Amendment protects the individual from invasion of his privacy by governmental intrusion and is not an "'adjunct to the ascertainment of truth'." Schneckloth v. Bustamonte, ____ U.S. ____ , 93 S. Ct. 2041, 2055 (1973).

The Fourth Amendment cannot properly serve as an enforcer of Fifth Amendment rights except perhaps when circumstances are such that infringements of both constitutional guarantees are so commingled as to make them one. This was the obvious import of the Wong Sun decision. Officers had entered Blackie Toy's home unlawfully and pursued him to his bedroom when he fled upon learning the identity of the officers. The statements Toy made immediately upon the officers entry into the room and while they were handcuffing him were suppressed. These statements were so inextricable from the circumstances of the immediate arrest that they were held to be tainted by it. at p.484-485 484-485.

The instant situation does not fall within the very narrow category of cases where incriminating statements are tainted because of their inclusion within the immediate surroundings of the unlawful conduct of the police. The petitioner did not make a statement when he was confronted by police in his apartment. After several hours of custody, which included some admittedly non-hostile interrogation and a search by automobile for his accomplice, the petitioner voluntarily made two formal statements, both preceded by Miranda warnings.

It should be noted also that the statements were attempts at exculpation by the petitioner, thus rendering his statements even more voluntary and implying waiver of any residuum of rights infringed by the unlawful custody. Cf. Samora v. U.S., 406 F. 2d 1095 (5th Cir. 1969) at p. 1099. Such a positive and willful act, removed in proximity of time and place from the unlawful conduct of the officers and made in full awareness of his constitutional right to remain silent, cannot be described as tainted by the arrest.

CONCLUSION

WHEREFORE, respondent respectfully requests that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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-5-

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6650

RICHARD BROWN,

Petitioner,

v.

ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6650

RICHARD BROWN,

Petitioner,

v.

ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is reported at 56 Ill. 2d 312, 307 N.E.2d 356 (1974).

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on January 31, 1974. No petition for rehearing was filed. The petition for a writ of certiorari was filed on May 1, 1974, and was granted on October 21, 1974. Jurisdiction of this Court is conferred by 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED FOR REVIEW

Whether *Wong Sun* dictates that petitioner's two statements are inadmissible as evidence in petitioner's trial, and more specifically: whether the Illinois Supreme Court was correct in ruling that the mere giving of *Miranda* rights by a policeman guilty of an unconstitutional and independently oppressive arrest and illegal detention dissipated the "taint" of such oppressive unconstitutional behavior and rendered such statements admissible as evidence.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment to the Constitution of the United States:

> "The right of the people to be secure in their persons, houses, . . .against unreasonable searches and seizures shall not be violated. . ."

Fifth Amendment to the Constitution of the United States:

> "No person . . . shall be compelled in a criminal case to be a witness against himself . . ."

Fourteenth Amendment to the Constitution of the United States:

> " . . . nor shall any State deprive any person of life, liberty or property without due process of law . . . "

STATEMENT OF THE CASE

Petitioner was tried before a jury in the Circuit Court of Cook County, Illinois and found guilty of the accountability-murder of Roger Corpus. The State's case against petitioner consisted mainly of two statements taken from him. The first, an oral statement[1], was taken by Officers Nolan and Lenz, the arresting officers. The second, an unsigned written statement, was elicited by an Assistant State's Attorney. Petitioner filed a pretrial motion to suppress both statements, challenging the constitutionality of his arrest and detention. A hearing was held, but the motion was denied. (R. 130)[2]

At trial, testimony was given by deceased's mother, brother, sister, and neighbor, all of whom lived in the

---

[1] The oral statement was typed into a written statement, signed by petitioner, but not introduced into evidence because the *Miranda* warnings were insufficient. Officer Nolan repeated to the jury the oral statement.

[2] Record references (R. 1)-(R. 130) indicate the hearing on the motion to suppress. References (R. 292)-(R. 530) indicate the trial.

same building as the deceased but were not occurrence witnesses. Officers Nolan and Lenz testified, and petitioner's second (unsigned, written) statement was read to the jury. Petitioner did not take the stand.

Circumstances Of The Unlawful Arrest For Investigation And The Procurement Of Statements

Petitioner was arrested on May 13, 1968, for "investigation", (R. 59, 72, 410, 413) or "questioning" (R. 468) regarding the homicide of Roger Corpus. Officer Nolan testified that on May 13, acting pursuant to official police department orders, he and Officer Lenz proceeded to petitioner's apartment (R. 433), arriving between 4:30 and 5:00 p.m. (R. 434) The pair met a third detective at the apartment, Officer Wasmund, who remained outside, at street level, as the two entered the building. (R. 401)

Officer Nolan, a detective for five and one-half years (R. 431), and Officer Lenz, a member of the police force for fourteen years and a detective for twelve years (R. 3, 4), broke into petitioner's apartment upon finding no one home. Possessing neither a search or arrest warrant (R. 103) nor probable cause for arrest (Illinois Supreme Court Opinion, p.2), the two detectives searched the apartment (R. 21, 412) and laid in wait, concealed, for petitioner's return for three hours. (Opinion, p.1, R.434) When Petitioner arrived at approximately 7:45 p.m. (R. 4, 57) and began entering his apartment, Nolan and Lenz jumped out at him with drawn guns. (R. 19, 102, 103, 462) Petitioner, a Black man did not know at this time that his two white

assailants in street clothes were police officers. (R. 128) Officer Lenz told petitioner that he was under arrest. (R. 20, 71) Petitioner denied being Richard Brown. (R. 21, 72, 103)

The two arresting officers then handcuffed petitioner's hands behind his back (R. 104, 463), pushed him against a wall (R. 462), and searched his person. (R. 462)

Lenz first told petitioner the reason for his arrest while petitioner was being searched. (R. 23) The officers then immediately drove petitioner to the Maxwell Street Police Station. (R. 4) Approximately ten to twenty minutes elapsed between the time of petitioner's arrest and the arrival of the three men at the police station. (R. 5, 413) Petitioner testified at the suppression hearing that Officer Lenz stated to his sergeant, "Sarge, we have got him. We picked him up." (R. 104, 105) Lenz did not recall this conversation. (R. 25) The sergeant then directed the two officers to take petitioner inside an interrogation room. (R. 105) Although the record is unclear, petitioner was apparently kept handcuffed while in the interrogation room. Petitioner testified, without contradiction, that his hands were handcuffed behind his back when he first entered the police station (R. 104), and there is no testimony that the handcuffs were ever removed.

Once inside the interrogation room, petitioner soon (i.e., within a few minutes (R. 59)) began talking with and answering questions put by Officers Lenz and Nolan. First, Lenz gave petitioner what purported to be *Miranda* warnings. On direct examination, Lenz testified to the warnings supposedly given. However, these failed to include a warning that petitioner had the right to a

court-appointed counsel if he lacked sufficient funds to retain counsel. (R. 6) Cross-examination cured this defect, for Lenz there testified that petitioner was told of his right to court-appointed counsel. (R. 29)

In regard to waiver of the *Miranda* rights, Officer Lenz testified, on direct examination, petitioner indicated that he did not want an attorney present after being advised that he had a right to one. (R. 6) Yet, on cross-examination, Lenz stated that petitioner responded to the same question by saying, "he did not have an attorney." (R. 29) In further contrast, petitioner testified that although he was warned of his right to have an attorney present during the interrogation, Officer Lenz told him he did not need one. (R. 117)

Following *Miranda* warnings, Officer Lenz told petitioner that the police were aware of a pool room incident on 5th Avenue. Petitioner responded, "Oh, you know about that." Lenz also informed petitioner that the police had obtained a bullet from the ceiling of the pool room and sent it to their crime lab for comparison with bullets taken from the body of the deceased. Petitioner again responded, "Oh, you know about that too." Lenz then asked petitioner if he wanted to talk about the Roger Corpus homicide. Petitioner then proceeded to give a statement. (R. 30) Officer Nolan's testimony substantially corroborated Lenz's. (R. 78, 79)

Petitioner testified that Lenz told him that his help was essential because the bullets found in the pool room were the *same* as those found in the body of the deceased. Then, according to petitioner, Officer Lenz said, "All the arrows is (*sic.*) pointing directly at you," and petitioner responded that he did not kill anybody.

Lenz replied, "Well you going (*sic.*) to have to give me somebody who did." Petitioner then made the above noted statement. (R. 112), which was admitted into evidence through the testimony of Officer Nolan. (R. 447-453) Petitioner also testified that the officers told him that his fingerprints were found in the deceased's apartment. (R. 106) At trial the State stipulated that the bullet from the ceiling of the pool room could not be compared with the bullets in the body of the deceased, and that no fingerprints other than those of the deceased were found in the deceased's apartment. (R. 542, 543)

Petitioner then signed a typed statement which the State never introduced into evidence. Presumably, this was because it did not contain warnings that anything petitioner said would be used against him and that if he was without sufficient funds, a lawyer would be furnished upon his request. (R. 82-3) Officer Nolan testified at trial that petitioner said in his statement that he met Claggett at the apartment of the deceased, that Claggett shot the deceased, that petitioner tried unsuccessfully to prevent the shooting, and that Claggett ordered petitioner at gunpoint to tie deceased up, which he did. (R. 447-453) The officer's *incommunicado* interrogation of petitioner concluded at 8:45 p.m. (R. 64), approximately one hour after petitioner's unconstitutional arrest. The statement took approximately one-half hour. (R. 64) Petitioner testified that Officer Lenz told him immediately after his first statement that he "would have to help catch Jimmie [Claggett] in order to clear" himself. (R. 108-109) Officer Lenz corroborated the fact that leniency was discussed by testifying at the suppression hearing that

petitioner indicated that "he would like to turn State's evidence against Claggett." (R. 42)

At 9:30 p.m., the two arresting-interrogating officers took petitioner to look for Claggett. After an hour of unsuccessful driving, they drove petitioner to central police headquarters to look for a picture of Claggett. (R. 10-11) Although the officers knew that a night bond court was open at that hour in the same building, they did nothing to bring petitioner before a judge (R. 38), as required by Illinois law.

The three left central police headquarters at 11:00 p.m., and returned to the area where they thought Claggett could be found. On this occasion, petitioner pointed out Claggett on the street, and he was taken into custody. (R. 12) The four then returned to the Maxwell Street Station, arriving at 12:20 a.m., and petitioner was placed in the same interrogation room. (R. 13)

At 2:00 a.m., May 14, Assistant State's Attorney John Crilly arrived (R. 44), spoke to petitioner for one-half hour (R. 46), and took a second statement from petitioner in the presence of a court reporter. (R. 49-50) Crilly testified at the suppression hearing that Officer Nolan was also present. (R. 48) This statement, duly transcribed, contained *Miranda* warnings, but petitioner did not sign it. (R. 113) Interrogation ceased at 3:00 a.m. (R. 50) This second (unsigned) statement was admitted into evidence at petitioner's trial. (R. 510-529)

Petitioner was first allowed to make a phone call at 4:00 a.m., May 14, when he called his mother. (R. 567) No attorney was provided for petitioner until he was finally taken before a magistrate at about 9:30 that

same morning (R. 39), approximately 14 hours after his unconstitutional arrest. Until such time, petitioner had continuously and uninterruptedly been held in the officers' custody, alone and bereft of any personal support from counsel, relatives, friends, or anyone else.

SUMMARY OF ARGUMENT

Petitioner's two statements must be excluded because obtained as "tainted" unconstitutional by-products of petitioner's independently oppressive unconstitutional arrest and illegal detention. Petitioner's *Miranda* warnings were ineffective to dissipate such "taint." Petitioner's second statement must also be excluded as a "tainted" by-product of petitioner's first statement and because it was "come at" by intentionally unconstitutional police misconduct violative of petitioner's Fourth and Fourteenth Amendment Rights.

I.

PETITIONER'S FIRST STATEMENT MUST BE SUPPRESSED AS THE PRODUCT OF PETITIONER'S UNCONSTITUTIONAL ARREST AND ILLEGAL DETENTION.

A. The Illinois *Per Se Attenuation* Rule Totally Ignores The Officer's Flagrant And Abusive Violations Of Petitioner's 4th And 14th Amendment Rights.

Petitioner contended before the Supreme Court of Illinois that his first stationhouse statement should have

been suppressed as a fruit of the unconstitutional and independently oppressive illegality under *Wong Sun v. United States*, 371 U.S. 471 (1963). In rejecting this contention, the Supreme Court of Illinois reasoned that the mere giving of the *Miranda* warnings was sufficient to "purge the primary taint of that unlawful invasion." (Ill. Sup. Ct. Opinion, p.3) By choosing exclusively to focus on petitioner's *Miranda* warnings, the Illinois Court ignored all of the other circumstances surrounding petitioner's first statement—the flagrant and abusive police conduct, both in terms of bad faith and number of constitutional violations; the ambiguous purported waiver of *Miranda* rights; and the trickery by the police (i.e., the bullets matched and petitioner's fingerprints were found in deceased's apartment) linking petitioner to the crime.

Miranda v. Arizona, 384 U.S. 436 (1966), dealt with the protection constitutionally demanded for the privilege against self-incrimination when a citizen is subjected to custodial police interrogation and confesses.

Miranda extended constitutional protection to persons subjected to the inherent coerciveness of custodial interrogation. *Miranda* did not address itself to the additional coerciveness of an unconstitutional and independently oppressive arrest for "investigation" or of a subsequent illegal detention. The case at bar involves constitutional violations and other oppressions separate and apart from the inherent coerciveness of custodial interrogation. The Supreme Court of Illinois did not even consider the effect of these other circumstances including constitutional violations in holding that the petitioner's challenged statements were "sufficiently an

act of free will to purge the primary taint of the unlawful invasion." (Ill. Sup. Ct. Opinion, p. 3)

In *Westover v. United States*, 384 U.S. 436 (1966), this Court squarely held that other circumstances surrounding the confession can negate the protection normally afforded by *Miranda* warnings. Westover was given *Miranda* warnings by the F.B.I. before making a confession. In holding that his confession was improperly admitted at trial, this Court heavily stressed Westover's prior interrogation for long periods during a fourteen hour custodial detention by the Kansas City police. Since the F.B.I. *Miranda* warnings came, in effect, at the end of one long, continuous interrogation period, such warnings were held to be ineffective to protect Westover's constitutionally protected rights. *Westover* fairly holds that the more oppressive the prior and attendant circumstances surrounding the taking of the challenged custodial statement, the less the weight to which the warnings are constitutionally entitled. In petitioner's case, just as in *Westover*, they are entitled to little, if any weight, on the question of admissibility.

In *Michigan v. Tucker*, ____ U.S. ____, 41 L.Ed. 2d 182, 192 (1974), this Court recognized that *Miranda* plainly contemplates: "a defendant's statements might be excluded at trial despite their voluntary character under traditional principles." Indeed, this is *Miranda's* most basic point. Certainly, the giving of *Miranda* warnings in a case where actual physical torture was employed by the police (Cf. *Brown v. Mississippi*, 297 U.S. 278 (1936)) would not end this Court's inquiry and automatically require a holding that the confession is constitutionally admissible. In other words, the "taint" of an attendant or prior physical beating of the

accused by police simply could not be "purged" or cut-off by the reading of a *Miranda* card by a police officer participant in the beating. The unconstitutional acts committed by Officers Lenz and Nolan are the constitutional equivalent in the present case to the physical beating in *Brown*.

B. Petitioner's Unconstitutional Arrest And Illegal Detention Under Flagrant And Abusive Circumstances Negate Any Idea Of "Free Will." Petitioner's Fourth, Fifth, and Fourteenth Amendment Rights Were Inexcusably Violated.

Wong Sun was the first case to suppress a statement or confession of a defendant as the product of an unlawful arrest. The exclusion of James Wah Toy's statement logically followed from a long line of this Court's decisions.

In 1914, in an endeavor to protect the rights guaranteed by the Fourth Amendment, this Court adopted the exclusionary rule in the case of *Weeks v. United States*, 232 U.S. 383 (1914). In *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920), this Court first advanced the doctrine of "taint" or "fruit of the poisonous tree" in holding that all evidence gained from illegal government practices, directly and indirectly, was inadmissible, unless knowledge of the evidence was gained from an independent source. Twenty years later in *Nardone v. United States*, 308 U.S. 338 (1939), this Court reaffirmed the independent source doctrine of *Silverthorne* and coined the phrase "fruit of the poisonous tree." The Court then held that the

connection between the illegality and the evidence had become "so attenuated as to dissipate the taint." Almost fifty years after *Weeks*, after considerable experimentation among the courts and debate among the commentators, this Court, in *Mapp v. Ohio*, 367 U.S. 643 (1961), incorporated the exclusionary rule into the Due Process Clause of the Fourteenth Amendment.

In *Wong Sun v. United States*, 371 U.S. 471 (1963), federal agents illegally entered defendant Toy's living quarters and arrested him. Toy made statements implicating himself and Johnny Yee. Agents arrested Yee and seized narcotics which he said were obtained from Toy and Wong Sun. All three were arraigned and released on their own recognizances. Several days later, the suspects returned voluntarily and made written statements. This Court excluded the statements made by Toy in his bedroom as the product of the illegal arrest:

> "In order to make effective the fundamental constitutional guarantees of sanctity of the home and inviolability of the person, *Boyd v. United States*, 116 U.S. 616, this Court held nearly half a century ago that evidence seized during an unlawful search could not constitute proof against the victim of the search. *Weeks v. United States*, 232 U.S. 383." 371 U.S. at 484

The Court also excluded the narcotics surrendered by Yee as the fruits of Toy's statement, and Toy's later written statement on other grounds. Wong Sun's post arraignment statement was held to be admissible since the connection between it and Wong Sun's illegal arrest had "become so attenuated as to dissipate the taint." at 371 U.S. 491.

Wong Sun's reasoning that the Fourth Amendment which compels suppression of physical evidence also compels suppression of oral statements was never challenged by Mr. Justice Clark's dissent, joined by Justices Harlan, Stewart, and White. Regarding Toy's conviction, the dissent disagreed only with the majority's conclusion that the federal agents had no probable cause to arrest Toy:

> "In view of this there is no 'poisonous tree' whose fruits we must evaluate, and Blackie's [Toy's] declaration at the time of the arrest and the narcotics found in Yee's possession are admissible in evidence." 371 U.S. at 503

The dissent did not take issue with the majority's application of the fruits doctrine (see *Silverthorne, supra*) in regard to oral statements. In the case at bar, Illinois has specifically held the police lacked probable cause to arrest petitioner.

Suppressing an oral statement which is the product of an arrest in violation of the Fourth and Fourteenth Amendments finds support in the policies of deterrence and judicial integrity underlying *Wong Sun's* exclusionary rule:

> "Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion. See *Nueslein v. District of Columbia*, 115 F.2d 690. Nor do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence. Either in terms of deterring lawless conduct by federal officers, *Rea v. United States*, 350 U.S. 214, or of

> closing the doors of the federal courts to any use of evidence unconstitutionally obtained, *Elkins v. United States*, 364 U.S. 206, the danger in relaxing the exclusionary rules in the case of verbal evidence would seem too great to warrant introducing such a distinction." at 371 U.S. 485-86. (Footnote omitted)

A major disadvantage of the exclusionary rule is that competent, trustworthy evidence is often withheld from the trier of fact. Since in at least two respects verbal evidence is inherently less reliable than physical evidence, the suppression of verbal evidence is *more* justifiable.

First, since the probative value of verbal evidence depends upon the memory and credibility of the witness, it is inherently less reliable than physical evidence.[3] Second, since people do not always tell the truth, there exists no assurance that the oral statement itself is the truth. To put it in reverse: what better proof of the possession of a weapon is there than the weapon itself?

The illegality of an arrest is often the reason for excluding evidence. Indeed, when a search uncovers physical evidence during the course of an illegal arrest, that evidence is routinely suppressed as the tainted product of the arrest's illegality. (See *Henry v. United States*, 361 U.S. 98 (1959); *Draper v. United States*, 358 U.S. 307 (1959)).

Even physical evidence seized days after an illegal arrest has been excluded by this Court as a tainted

[3] A transcript or tape recording of the custodial interrogation could largely alleviate this problem (See *Wainwright v. City of New Orleans*, 392 U.S. 598, 604-607 (1968) (Mr. Chief Justice Warren dissenting from Order dismissing writ)).

product thereof. (*Davis v. Mississippi*, 394 U.S. 721 (1969)) In *Davis*, a rape occurred on December 2, 1965. On December 3, Davis was brought to the police station and released after being fingerprinted and routinely questioned. Between the 3rd and 7th, he was interrogated several times and exhibited several times to the victim for identification, which never occurred. On December 12, Davis was confined overnight in jail. On the 13th, he signed a statement. While still confined on the 14th, he was fingerprinted a second time. These prints were then matched with the prints taken from the window of the victim's home and introduced at trial. This Court suppressed the fingerprints as being the product of the illegal arrest. It did so, moreover, knowing that retrial would doubtless produce another conviction. The "imperative of judicial integrity" is at the very heart of *Davis*.

Davis is important here for yet another reason. Petitioner's case is *a fortiori* from that decision. If fingerprint evidence obtained 11 days after an original illegal arrest is constitutionally excludable under the Fourth Amendment as its tainted by-product, oral incrimination within hours following an unconstitutional and independently oppressive arrest at gunpoint, accompanied by illegal detention and *incommunicado* police station interrogation is *a fortiori* excludable on the same basis.

The Supreme Court of Illinois held both of petitioner's interrogation room statements admissible on the ground that the *Miranda* warnings:

> "[s]erved to break the causal connection between the illegal arrest and the giving of the statements, and that defendant's act in making the statements

> was 'sufficiently an act of free will to purge the primary taint of the unlawful invasion.' *Wong Sun v. United States*, 371 U.S. 471, at 486." Ill. Sup. Ct. Opinion, p. 3

This holding purports to apply the same test applied by this Court to Toy's bedroom statement and Sun's noncustodial statement after judicial release on his own recognizance. Certainly, petitioner's case is a far cry from Sun's statement in *Wong Sun* since petitioner was under continued police custody, without the benefit of a lawyer, relatives, or friends, from the time of his unconstitutional arrest.

The Government in *Wong Sun* argued that Toy's bedroom statement resulted from "an intervening act of free will." This Court disagreed:

> "This contention, however, takes insufficient account of the circumstances. Six or seven officers had broken the door and followed on Toy's heels into the bedroom where his wife and child were sleeping. He had been almost immediately handcuffed and arrested. Under such circumstances it is unreasonable to infer that Toy's response was sufficiently an act of free will to purge the primary taint of the unlawful invasion." (footnote omitted) 371 U.S. at 486

In *Traub v. Connecticut*, 374 U.S. 493 (1963), this Court, in a *per curiam* opinion, vacated the judgment of the Connecticut Supreme Court and remanded the case for further consideration in light of *Wong Sun* and *Ker v. California*, 374 U.S. 23 (1963). First, *Traub* applies *Wong Sun* to state proceedings. Second, since the Connecticut Supreme Court had already held that the confessions were voluntary, this Court's vacating and remanding can only mean one thing: that this Court

will more carefully scrutinize a confession elicited during the course of custodial interrogation following an unconstitutional arrest. In other words, even if a confession is voluntary, the same confession may be suppressed under the "free will" test. (See *Morales v. New York*, 396 U.S. 102 (1969))

Petitioner's initial statement was not an act of "free will." The causal connection between such statement and the egregiously unconstitutional acts of the police at petitioner's apartment was not "so attenuated as to dissipate the taint." *Wong Sun*, at p. 491. Indeed, the illegal taint was a continuing one, growing progressively more exploitive with each additional minute of petitioner's *incommunicado* police station interrogation. On May 13, 1968, a little before 8:00 p.m., petitioner entered his own home. Imagine his terror when two white male strangers[4] in street clothes suddenly leaped out without warning, their drawn guns pointing directly at him. (R. 19, 102, 103, 462) The two strangers handcuffed petitioner's hands behind his back (R. 104, 463), shoved him up against the wall (R. 462), and searched him. (R. 21, 462) Not until the police searched petitioner did Officer Lenz tell him he was under arrest for murder. (R. 23) Petitioner denied being Richard Brown. (R. 23) The two police officers then hurried petitioner off to a police station interrogation room.

The arrest was without probable cause (Ill. Sup. Ct. Opinion, p. 2) and thus violated petitioner's Fourth and Fourteenth Amendment rights. As if the unconstitutional and independently oppressive arrest was not

[4]The two police officers were in plain clothes and failed to announce their agency at this first encounter. (R. 128)

enough, the police continued illegally to detain petitioner for over thirteen hours before bringing him before a judge, in violation of the Illinois prompt arraignment law. (Ill. Rev. Stat. ch. 38, sect. 109-1 (a))[5] Moreover, Officer Lenz testified that he was aware that a night bond court was both open for business and conveniently at hand. (R. 38)

The same two officers, Lenz and Nolan, who had only minutes before unconstitutionally arrested petitioner, entered a small interrogation room with petitioner. (R. 105)[6] Lenz, who only minutes before was pointing a snubnosed .38 at petitioner's head (R. 102), gave petitioner warning of his constitutional rights under *Miranda*.

Miranda requires police to advise the accused he has "not merely a right to consult with counsel prior to

[5]Ill. Rev. Stat. ch. 38, Sec. 109-1 (a) provides:

> A person arrested without a warrant shall be taken *without unnecessary delay* before the nearest and most accessible judge in that county, and a charge be filed.

(b) provides:

> The judge shall:
>
> (1) Inform the defendant of the charge against him and shall provide him a copy of the charge.
>
> (2) Advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney of this State or represent him. . . (Emphasis Added)

[6]Although the record is unclear, petitioner was apparently kept handcuffed while in the interrogation room. Petitioner testified, without contradiction, that his hands were handcuffed behind his back when he first entered the police station (R. 104), and there is no testimony that the handcuffs were ever removed.

questioning, but also to have counsel present during any questioning." 384 U.S. at 470. *Miranda* also clearly specifies on whom the burden of demonstrating waiver rests:

> "...a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." 384 U.S. at 475

The issue of whether petitioner effectively waived his rights under *Miranda* is not before this Court. A narrower issue is: whether petitioner's purported waiver of constitutional rights effectively attenuated the causal connection between petitioner's unconstitutional arrest and illegal detention and his initial resulting statement.

Under these circumstances, petitioner's purported waiver of his *Miranda* rights was at most vague, at the least inadequate. Officer Lenz testified on cross-examination at the suppression hearing that petitioner stated "he did not have an attorney" when asked whether he wished to have an attorney present at that time. (R. 29) Petitioner testified on cross-examination at the same hearing that, though warned of his right to have an attorney present during the interrogation, Lenz told him he did not need one. (R. 117) Petitioner, understandably frightened by the oppressive series of unconstitutional strong arm tactics of the police, was obviously confused concerning his right to have a free attorney present during interrogation. Petitioner had only an eighth grade education (R. 115) and only one previous encounter with police, a misdemeanor conviction. (R. 640) Lenz should have known of petitioner's misunderstanding from petitioner's above quoted statement, and acted to correct it. Officer Lenz instead chose to do nothing. Instead of supporting the Supreme Court of Illinois' conclusion of attenuation, this vague, inadequate, purported waiver of *Miranda* rights clearly shows that no attenuation exists.

Officers Nolan and Lenz further acted to overbear petitioner's free will and vitiate whatever protection remained from the *Miranda* warnings by deceiving petitioner about the existence of certain evidence. Officer Lenz's account was as follows:

> "I informed Mr. Brown that we were aware of an incident that had taken place in a pool room on 5th Avenue, on, as I recall, the 3rd – approximately the 5th of May, 1968. His answer was, 'Oh, you know about that.' I also informed him that we had obtained a bullet from the ceiling of this pool room and that this bullet had been taken to our crime lab to be compared with bullets taken from Roger Corpus' body. [Continuing] His answer to this was, 'Oh, you know that too.' I then asked Mr. Brown if he wished to tell us what he knew about Roger Corpus' homicide. He informed us that he did." (R. 30-31)

Petitioner then immediately gave his first statement. (R. 33) Officer Nolan's testimony substantially corroborated Lenz. (R. 78, 79)

Petitioner's testimonial account of the event was not substantially different:

> "Well, I can recall when I got down to the station Officer Lenz was telling me that I was not going to be charged with the pool room. But he told me that I would have to help him, he said, because the bullets he found in the pool room were the same in the body. He said, 'All the arrows is (*sic.*) pointing directly at you.' I told him then that I

> didn't kill anybody. Then he said, 'Well, you going (*sic.*) to have to give me somebody who did.' And this is when I told him about Jimmie Claggett . . . " (R. 112)

The officers' interrogation, trickery, and deceit in telling petitioner that his fingerprints were found in deceased's apartment and letting him think that the pool hall ceiling bullet matched those found in deceased's body was an obvious attempt to overbear such "free will" as petitioner might at this point have had left. Bereft of counsel and friends, held *incommunicado* by police officers apparently desperate enough to do anything, such police trickery on material evidence points was clearly calculated to destroy every remaining vestige of petitioner's "free will" and promptly to induce him to waive his constitutional rights of silence and to representation by counsel. In any event, petitioner's waiver of rights, or purported waiver, followed immediately upon the heels of the police practices in question. (Cf. *Spano v. New York*, 360 U.S. 315 (1959); *Lynumn v. Illinois*, 372 U.S. 528 (1963))

The lapse of time between petitioner's flagrantly unconstitutional arrest and the giving of his first statement does not support an attenuation finding for several reasons. First, the time interval in question was short. Officer Lenz testified at the suppression hearing that the trip from petitioner's home to the police station took approximately 20 minutes (R. 5), shortening this at trial to 10-15 minutes. (R. 5, 413) Petitioner was apparently taken to the interrogation room immediately upon arrival at the police station. (R. 105) In sum, petitioner began making his first statement only minutes after his ride to the station.

Second, since the police effected the unconstitutional arrest in a frightening and intimidating manner, the taint continued into the interrogation room.

Third, the same arresting-interrogating officers diffused the effect of petitioner's *Miranda* warnings by the use of trickery and deceit. Petitioner was thus deprived of the protection of constitutional rights to which he was clearly entitled had he only been *constitutionally* arrested and *lawfully* detained. (See *Miranda v. Arizona*, 384 U.S. 436 (1966))

Fourth, the fact that petitioner did not give a statement until after his unconstitutional arrest is no reason to conclude that he exercised his "free will" minutes later while being interrogated *incommunicado*. Petitioner was at the mercy of the arresting officers from the time of his unconstitutional arrest. The officers elected not to interrogate petitioner concerning the offense at his apartment or during the ride to the police station. (R. 24, 73-75, 103-104) Petitioner's interrogation did not begin until he was placed in the small interrogation room. Once inside the room, the officers first attempted to exploit their arrest for "investigation." Under *Wong Sun*, no attenuation exists:

> "Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by *exploitation of that illegality* or instead by means sufficiently distinguishable to be purged of the primary taint.' " (Emphasis Added) 371 U.S. at 488

Finally, and perhaps most importantly, the arrest was the most reprehensible and pernicious of all unconstitutional arrests, one for "investigation" or

"questioning." The officers testified both at the suppression hearing and at trial that petitioner was arrested for "investigation" (R. 59, 72, 410, 413) and for "questioning." (R. 468)

Petitioner's case is *a fortiori* from *Wong Sun* since that case did not involve an arrest for "investigation" or "questioning":

> "Police must make out part of their case at least before the citizen is arrested. We do not permit the practice engaged in in some lands of allowing arrests on suspicion or at the caprice of the police, so that long interrogation can follow with the hope it will make out the necessary case that justifies the arrest. Under our system the arrest is warranted not by what the police discover afterwards but by what they knew at the time."
>
> William O. Douglas, *Vagrancy and Arrest On Suspicion*, 70 Yale L.J. 1, 13 (1960).

Second, Toy incriminated himself in his bedroom in the company of his family, not in jail in response to *incommunicado* interrogation by the police. Finally, in *Wong Sun*, the treasury agents unlawfully broke into Toy's laundry, not to question and/or to jail Toy for the purpose of questioning, but to search for narcotics. Toy's oral incrimination of himself in his bedroom was certainly not planned by the agents; it may fairly even be viewed as a wholly unexpected by-product of their illegal presence. In petitioner's case, in contrast, Officers Lenz and Nolan acted premeditatedly, designedly, and deliberately from the beginning to obtain petitioner's statement.

II.

PETITIONER'S SECOND STATEMENT MUST BE SUPPRESSED AS THE PRODUCT OF PETITIONER'S FIRST STATEMENT, UNCONSTITUTIONAL ARREST, AND ILLEGAL DETENTION.

Petitioner testified that Officer Lenz told him immediately after his first statement that he "would have to help catch Jimmie [Claggett] in order to clear" himself. (R. 108-109) Petitioner further testified on cross-examination at the suppression hearing:

> ASSISTANT STATE'S ATTORNEY: Q. Were you – what type of leniency were you promised by the detectives?
>
> PETITIONER: A. Well –
>
> ASSISTANT STATE'S ATTORNEY: Q. Said you would go free? Is that what they told you?
>
> PETITIONER: A. No, Officer Lenz told me that I would be a State witness in this case. And he also told me that when I got up here that it would be a deal made between the State's Attorney and the Public Defender. (R. 120)

Officer Lenz corroborated the fact that leniency was discussed by testifying at the suppression hearing that petitioner indicated that "he would like to turn State's evidence against Claggett." (R. 42)

Petitioner then fully co-operated with Officers Lenz and Nolan in attempting to find Claggett. After an hour of unsuccessful driving around, the three returned to central police headquarters. (R. 10-11) According to Nolan, petitioner was eager to resume the search, petitioner saying "let's try again to see if we could find

Claggett." (R. 454) Officers Lenz and Nolan, accompanied by petitioner, then resumed their search. Petitioner eventually pointed out Claggett on the street, and the officers took Claggett into custody. (R. 12)

Upon returning to the Maxwell Street Station, petitioner was placed in the same interrogation room. (R. 13) Lenz and Nolan called Assistant State's Attorney Crilly who arrived at 2:00 a.m., for the purpose of procuring a statement. After talking to Officer Lenz, Crilly interrogated defendant for one-half hour (R. 45), while the two were alone in the interrogation room. The record is silent as to the substance of the interrogation. Then, in the presence of a court reporter and Officer Nolan (R. 48), Assistant State's Attorney Crilly procured a statement. The second statement was substantially the same as the first.

Petitioner's "free will" was already overborn by the two officers by the time he made the first statement (See Argument I). Officers Lenz and Nolan continued to exploit the illegality of the unconstitutional arrest and illegal detention by discussing leniency with petitioner. From the time of petitioner's first statement, he fully co-operated with the officers in attempting to locate Claggett, in suggesting a resumption in the search, and in eventually pointing out Claggett on the street. The police were playing on petitioner's expressed hopes for leniency by using him to lead them to Claggett.

After Claggett was under arrest, Officers Lenz and Nolan shifted their focus to the procurement of yet another statement from petitioner. Officer Nolan was conspicuously present in the interrogation room when Assistant State's Attorney Crilly interrogated petitioner

and procured the second statement. Petitioner understandably co-operated with Crilly in giving a statement which was substantially the same as his statement already given to Nolan only several hours before.

Under *Wong Sun*, this second statement must be excluded:

> "Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by *exploitation of that illegality* or instead by means sufficiently distinguishable to be purged of the primary taint.'" (Emphasis Added) 371 U.S. at 488

Alternatively, the second statement must be excluded because of the State's inability to sustain the burden of proving that the second statement was not the product of unconstitutional illegality (See *Wong Sun*), but also that it was not directly produced by the existence of the earlier statement. (See *Darwin v. Connecticut*, 391 U.S. 346 (1968), Harlan, J. concurring in judgment; *Killough v. United States*, 315 F.2d 241 (D.C. Cir. 1962), Wright, J., concurring in judgment) The accused may well think he has little to lose by repeating the first statement. In the case at bar, petitioner had no meaningful legal choice. He had to talk. (See *Darwin v. Connecticut*, Harlan, J. concurring in judgment)

III.

EXCLUSION OF PETITIONER'S TWO STATIONHOUSE STATEMENTS IS THE ONLY EFFECTIVE SANCTION FOR THE VARIOUS CONSTITUTIONAL VIOLATIONS WHICH OCCURRED. PRESENTLY AVAILABLE ALTERNATIVE REMEDIES ARE ILLUSORY, NOT REAL.

It is mostly a Constitution this Court sits to expound, *Marbury v. Madison*, 9 U.S. (5 Cranch) 137 (1803), and nowhere is that function more exhalted and ennobling than in the explication of "[c]onstitutional rights that [normally] must be defended, if at all, on a lonely street, on a highway at night, in a police station or before a justice of the peace." Reich, *Police Questioning of Law Abiding Citizens*, 75 Yale L.J. 1161, 1169 (1966). Such rights, primarily Fourth Amendment rights, thus frequently abandoned because of fear of police or other official reprisal or left to default, "are always in trouble." *Ibid.* This is one reason why "the judiciary [and so, ultimately, this Court] has a particular responsibility to assure the vindication of constitutional interests such as those embraced by the Fourth Amendment." *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 407 (1971) (Harlan, J. concurring in judgment). Constitutional rights like those first typically asserted in stately appellate courtrooms usually in any event remain healthy and vibrant, sometimes despite themselves.

Another reason underlying special judicial attention to the vindication of Fourth Amendment interests is that they embrace freedoms from seizure or search of person or property without judicial warrant or probable

cause, from judicially unauthorized detention without bail with attendant overreaching police custodial *incommunicado* interrogation and from the *de facto* suspension of the Great Writ. These freedoms, more than others, distinguish us from the police state and let us breathe free.

For reasons heretofore assigned, it is clear that the only effective sanction for the unconstitutional and other oppressive police misbehavior in the case at bar is the exclusion at trial of petitioner's two statements made in response to *incommunicado* stationhouse interrogation following petitioner's independently oppressive and unconstitutional arrest. Moreover, it is submitted that the affirmative case for excluding such statements is very good indeed.

The "negative" case for excluding petitioner's two statements is equally impressive. There is simply no other even partially meaningful and effective sanction or remedy to redress the several serious violations of petitioner's protected rights which occurred. As noted above, even some who on reasoned principle and practical grounds oppose the continued exclusion at criminal trials of *physical evidence* seized in violation of the Fourth Amendment take a different view of oral incrimination oppressively extracted from a suspect under color of law at the jail, e.g., Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. of Chi. L. Rev. 665, 722-723 (1970) and authorities there cited, and stoutly oppose jettisoning *Mapp* unless and until viable alternative sanctions are developed. E.g., *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 411, 422-427 (1971) (Mr. Chief Justice Burger dissenting). As stated by Professor Oaks:

"If constitutional rights are to be anything more than pious pronouncements, then some measurable consequence must be attached to their violation. It would be intolerable if the guarantee against unreasonable search and seizure could be violated without practical consequence. . . .The advantage of. . . (*Mapp's*) exclusionary rule–entirely apart from any direct deterrent effect–is that it provides an occasion for judicial review, and it gives credibility to the constitutional guarantees. By demonstrating that society will attach serious consequences to the violation of constitutional rights, the exclusionary rule invokes and magnifies the moral and educative force. . . of law." Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. of Chi L. Rev. 665, 776 (1970).

In cases such as petitioner's, involving inherently oppressive jailhouse incrimination pursuant to a deliberately unconstitutional arrest, it also effectively deters.

Existing sanctions (other than the exclusionary rule) for redressing Fourth Amendment violations may be disposed of briefly. Internal police disciplinary actions against policemen guilty of unreasonable searches and seizures are virtually unheard of. E.g., Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. of Chi. L. Rev. 665, 717, 726-729 (1970); Goldstein, *Administrative Problems in Controlling the Exercise of Police Authority*, 48 J. Crim. L., C. & P.S. 160 (1967); Little, *The Exclusionary Rule of Evidence As A Means of Enforcing Fourth Amendment Morality on Police*, 3 Ind. Legal Forum 375, 387-389 (1969-70).

The Chicago Police Department is typical. Oaks reports a study in which a University of Chicago law student examined the docket books of the federal

district court in Chicago for the years 1960-1967 to obtain a sample of 35 civil rights damage actions in which the City of Chicago or the police superintendent or department was originally joined as a co-defendant. The plaintiffs prevailed in 18 of these cases (3 by jury trial and 15 by settlement or bench trial), and obtained judgments totaling $126,000. The City of Chicago paid the judgments under state law, "*but not one of the 18 officers who had been found in the wrong was disciplined by the Police Department, not even by reprimand.*" Oaks, *supra* at 717, n. 145. (Emphasis added).

Again, a recent empirical study on file at the University of Chicago Law School concludes that the Chicago Police Department "does not look on such incidents [as unconstitutional arrests, searches and seizures] as proper circumstances for discipline." *An Empircial Study of the Exclusionary Rule: From Its Origins to its Alternatives*, 114 (unpub. research pap., U. of Chi. L. Sch., 1972). "In the area of noncorrupt police practices, police disciplinary procedures mainly concentrate on [physical] brutality." *Ibid*. Moreover, if there *ever was* a case of a Chicago police officer being disciplined for violating a citizen's Fourth Amendment rights, one could only learn of it accidentally or *sub rosa* since the Department refuses to make public an intelligible breakdown of its internal disciplinary statistics. *Id*., at 114, n. 244.

Criminal prosecution of offending police officers is almost as rare, if not more rare, than police policing themselves. E.g., Edwards, *Criminal Liability for Unreasonable Searches and Seizures*, 41 Va. L. Rev. 621

(1955); Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 Minn. L. Rev. 493, 494 (1955). As stated by Little:

> "Criminal sanctions are ineffective, first, because citizens seldom complain to the prosecutor over police violations of the Fourth Amendment. Many injured individuals, whether innocent or guilty of a particular crime, are people who are in frequent contact with and thus have a continuous relationship with the police. They do not want to cause the police trouble for fear the police will cause trouble, in the future, for them... Secondly, criminal legislation is rendered impotent because prosecutors usually do not prosecute police unless their conduct is corrupt or publicly shocking, which is not the normal search and seizure... Thirdly, if an action is brought for a more ordinary offense, the verdict is likely to be 'not guilty.' Quasi quantitative studies indicate that many trial judges, like prosecutors, do not favor criminal police sanction." (Citing studies). Little, *The Exclusionary Rule of Evidence As A Means of Enforcing Fourth Amendment Morality on Police*, 3 Ind. Legal Forum 375, 390-1 (1969-70).

Other than the so-called "ombudsman" approach, foreign to American experience and patently inadequate to the task unless greatly modified, and the Civilian Police Review Board, an institution which has never worked anywhere it has been tried, the sole remaining remedy is the damage action in tort. Petitioner's counsel was unable to unearth even one case where State injunctive relief was granted against police officer violations of the Fourth Amendment and the scope of available federal injunctive relief, sometimes granted, is extremely narrow. E.g., *Lewis v. Kugler*, 446 F.2d 134?

(3d Cir. 1971); *Lankford v. Gelston*, 364 F.2d 197 (4th Cir. 1966) and cases therein cited.

Tort damage actions in this area are ineffectual for many reasons. Thus the States are immune from suit under the Eleventh Amendment as judicially construed. *Employees v. Missouri Public Health Dept.*, 411 U.S. 279 (1973). Municipalities are likewise typically immune under state law and are clearly immune, along with counties, under the provisions of the Federal Civil Rights Act. *Moor v. County of Alameda*, 411 U.S. 693 (1973); *Monroe v. Pape*, 365 U.S. 167 (1961). There is, in a word, nobody available to satisfy judgments. It is an understatement to say that the offending police officers are themselves without funds. While some bonds of some supervisory policemen cover their subordinates in this area, this is not generally true and the superior officers themselves are protected from liability in all but the most extreme cases by a doctrine of qualified immunity.

Moreover, as one writer empirically studying the effectiveness of the tort remedy in Illinois concluded:

> "Suits against police for tort remedies seem to take a long time, a lot of money, and a bright lawyer..." Spitto, *An Empirical Study of the Exclusionary Rule: From Its Origins to Its Alternatives*, 110, n. 232 (unpub. research pap., U. of Chi. L. Sch., 1972).

The situation is enough to deter all but the most persistent and/or mad. The tort action likewise raises serious problems under the Equal Protection Clause, and there is, in any event, something obnoxious about the notion that the State, by paying money, can effectively suspend Fourth Amendment guarantees.

The plight of citizens convicted of crime and jailed because police violated their Fourth Amendment rights is pitiable. In some states, of course, where civil death doctrine prevails, any rights they might have are suspended during the period of their incarceration. Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 Minn. L. Rev. 493 (1955). Apart from this, however, the prospects of recovery are so bleak that not one such lawsuit has ever reached an appellate court, if, indeed, one has ever even been filed. The case most nearly in point is *Duncan v. Nelson*, 466 F.2d 939 (7th Cir. 1972). Plaintiff Duncan served 8 years in the Illinois State Penitentiary before his conviction was set aside by the Illinois Supreme Court on "involuntariness" grounds. Duncan was acquitted on retrial, in part, certainly, because Illinois could no longer use his confession. The Court of Appeals refused to permit Duncan to recover damages under the Federal Civil Rights Act or otherwise for the period of his incarceration. Since this was the gist of the lawsuit, the fact that the Court remanded for a small award on other grounds is irrelevant. The ultimate recovery, if any, could hardly even have covered costs, let alone attorney fees.

The facts of *Duncan* speak very loudly and eloquently. The only effective remedy to redress the several violations of petitioner's constitutional rights is for this Court to exclude his two statements made in the jailhouse, to reverse and to remand this cause to the Supreme Court of Illinois.

CONCLUSION

Petitioner prays that the judgment of the court below be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-6650

RICHARD BROWN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 56 Ill. 2d 312, 307 N.E. 2d 356 (1974). Appendix, page 107.

JURISDICTION

The jurisdiction of this Court is invoked to review a final judgment of the Supreme Court of Illinois pursuant to Title 28 U.S.C. § 1257(3). The judgment of the court below was entered on January 31, 1974. No petition for rehearing was filed. The Petition for Writ of Certiorari was filed May 1, 1974 and granted October 21, 1974.

CONSTITUTIONAL PROVISIONS

Fifth Amendment to the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the United States Constitution:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

> any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a voluntary statement given to police after full *Miranda* warnings should be excluded from evidence at trial because the initial arrest was later found to be without probable cause?

2. Whether the Fourth Amendment exclusionary rule should be extended to Fifth Amendment claims otherwise protected by clearly enunciated procedural safeguards?

STATEMENT OF THE CASE

During the early morning hours of May 6, 1968, Roger Corpus was murdered with a .38 caliber revolver in his second floor apartment on the West Side of Chicago. About five o'clock that afternoon, the victim's mother and a neighbor discovered the body, bound hand and foot.

The police were summoned and questioned Ernestine Corpus, the victim's mother (A. 69). She told the officers that on the previous evening she had been watching television with her mother and daughter, Constance DeLoach, in her apartment, which was located directly below her son's. Around 11:45 P.M., through the glass panel of her front door, she observed two men enter the vestibule, where they began talking. One man, who was later identified at trial as the petitioner, peered through Mrs. Corpus' front window (A. 71). Both men then went upstairs and entered the victim's apartment (A. 66-67). Mrs. Corpus did not know either man, but was able to give a general description of their clothing to the police (A. 79).

About one o'clock, Mrs. Corpus went to bed. Although she could hear people walking and other noises from her son's apartment, she did not hear anything which struck her as unusual (A. 67).

On the morning of May 7, 1968, Arthur Corpus, the victim's brother, had a conversation with Detective Denson in his mother's apartment. At that time, he furnished the officer with the name Richard Brown, apparently as a person acquainted with the victim (A. 73). Although both Arthur Corpus and the victim's sister, Constance DeLoach [who had seen Brown in the vestibule on the night of the

murder, (A. 71)] knew Brown, they did not suggest to the police that Brown was responsible for their brother's death because "Nobody asked". (A. 74).

On May 8, 1968, Arthur Corpus spoke with Detective Lenz and another officer (A. 73), and furnished them with two additional names (A. 76).

Five days later, on May 13, 1968, Officers Lenz, Nolan, and Wasmund, armed with a photograph of petitioner, proceeded to Brown's apartment at about 5:00 P.M. (A. 77, 87). Officer Nolan stayed in the hallway, Officeer Lenz entered Brown's apartment, and Officer Wasmund remained at the front of the building (A. 14, 77, 87).

At 7:45 P M. Brown came up the rear stairs to his apartment. Officer Lenz, from a window position inside the apartment told petitioner he was under arrest. (A. 42). Brown began backing away. Officer Nolan came up behind petitioner in front of the door to the apartment and, with gun drawn, informed petitioner that he was under arrest. (A. 42). He took Brown inside the apartment and searched him, but found no weapon. (A. 15). Detective Nolan asked petitioner if he was Richard Brown, which petitioner denied. Detective Lenz informed him again that he was under arrest and told him that the arrest was for the murder of Roger Corpus. (A. 16)[1]. The officers compared the photograph of Brown with petitioner and determined that he was Richard Brown (A. 16, 43), handcuffed him (A. 93) and took him downstairs, through a lot to their car. (A. 43).

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1. Detective Nolan testified on the motion to suppress that he told the petitioner that he was under arrest for "investigation" of a murder. (A. 43).

During the fifteen to twenty minute ride to the station there was some casual conversation, but petitioner was not interrogated concerning the murder (A. 17, 44).

When the three arrived at the station shortly after eight o'clock, petitioner was taken to a second floor interrogation room with a window, table and four chairs (A. 7, 18, 45). The officers left petitioner alone in the room for about ten minutes while they picked up the case file (A. 18, 45). When they returned to the room, they immediately advised petitioner of his constitutional rights (A. 7, 18-19, 36, 45-46)[2] and Brown answered that he understood these rights (A. 7, 20, 37, 46).

The officers then told petitioner that they knew about an incident in a pool room where petitioner had fired a revolver into the ceiling (A. 20, 37, 46), to which petitioner responded "Oh, you know about that" (A. 21, 37). The officers then told Brown that they had recovered the bullet from the pool room shooting and had sent it to the Crime Lab for comparison with the bullets taken from the body of Roger Corpus (A. 20, 46). Brown then indicated "I want to tell you the truth. I want to get it off my chest. The best thing to do is to tell the truth". (A. 46). Brown then gave the officers a two-page statement which took approximately one-half hour to complete (A. 9, 23). Petitioner then signed the statement (A. 9, 38).

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2. Petitioner alleges that these warnings were defective since Officer Lenz on direct examination, when asked to reiterate the warnings given, failed to indicate that he had told petitioner that if he could not afford an attorney, one would be appointed (See, A. 7). This defect was corrected on cross examination (See, A. 19). And see the testimony of Officer Nolan (A. 37, 45-46) indicating full Miranda warnings were given.

Brown then agreed to accompany the officers in an attempt to locate Jimmy Cleggett, the man Brown had identified as the person who actually shot Roger Corpus. The three left the station about 9:30 P.M. (A. 9). They drove around the general area Cleggett was known to frequent, with petitioner leaving the car with the officers to look into various business establishments searching for Cleggett (A. 9).

Unsuccessful in this effort, the three then drove to central police headquarters at about 11:00 P.M. in an effort to obtain a picture of Cleggett. (A. 10, 39). They did not find one (A. 39). They left headquarters and returned to the same area. Petitioner identified Cleggett as one of three pedestrians crossing in front of the police car at an intersection and the officers arrested Cleggett (A. 10, 39). The four then returned to the station arriving at approximately 12:00 or 12:30 A.M. (A. 11, 39).

Petitioner was placed in the same interrogation room as earlier to await the arrival of an Assistant State's Attorney (A. 11, 39). He was not questioned during this period. (See, A. 11, 40).

The Assistant State's Attorney arrived at approximately 2:00 A.M. and after a brief conversation with the officers, spoke to petitioner alone (A. 11, 40). This conversation lasted about twenty minutes (A. 11, 40) and was preceeded by full *Miranda* warnings (A. 28-29), to which petitioner responded that he did not want a lawyer, he wanted to talk to the Assistant (A. 29).

When the court reporter arrived, he and Detective Nolan entered the room (A. 29). The Assistant then again informed petitioner of his constitutional rights (A. 30) and further told him that he would be charged with murder (A. 32). Petitioner answered that he knew his rights and

wanted to make a statement (A. 30). He then gave a half-hour statement (A. 30).

Petitioner was tried for the offense of murder before a jury by the Circuit Court of Cook County on January 14, 1970 (A. 65). At trial, petitioner's first statement to the police was admitted in evidence orally through the testimony of Detective Nolan (A. 89-92). His second statement to the Assistant State's Attorney was admitted also (A. 95-105).[3]

Petitioner was convicted of murder and sentenced to 15 to 30 years imprisonment, from which he appealed, arguing in part that his initial arrest was illegal and therefore both statements should have been suppressed as the "product of that custody." In a written opinion the Supreme Court of Illinois found that petitioner's arrest was made without probable cause (A. 108), but concluded:

> From our examination of the record, in the light of the circumstances shown by the testimony, we conclude that the giving of the *Miranda* warnings, in the first instance by the police officer and in the second by the Assistant State's Attorney, served to break the causal connection between the illegal arrest and the giving of the statements, and that defendant's act in making the statements was "sufficiently an act of free will to purge the primary taint of the unlawful invasion." (*Wong Sun* v. *United States*, 371 U.S. 471, at 486.) We hold, therefore, that the circuit court did not err in admitting the statements into evidence. (A. 109-110).

and affirmed petitioner's conviction.

Petitioner then filed a petition for Writ of Certiorari which this Court allowed on October 21, 1974 (A. 111).

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3. Petitioner's pretrial motion to suppress both statements was denied after an evidentiary hearing (A. 65).

ARGUMENT

I.

FULL COMPLIANCE WITH THE REQUIREMENTS OF *MIRANDA* v. *ARIZONA* ATTENUATES *PER SE* ANY TAINT ARISING FROM AN ILLEGAL ARREST IF A SUBSEQUENT STATEMENT BY ONE IN POLICE CUSTODY IS IN ALL OTHER RESPECTS VOLUNTARY.

Relying primarily upon the Fourth Amendment, the petitioner here argues that his arrest without probable cause irreparably taints the first statement which he gave to the police and, likewise, the second confession to an Assistant State's Attorney as the product or fruit of the first. To adopt this theory in this factual content, is to say that the warnings enunciated by this Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966) have no significance.

The primary concern in determining the admissibility at trial of a statement made by a defendant while in police custody or while otherwise significantly deprived of his freedom of action, is the protection of the defendant's right under the Fifth Amendment to remain silent.[4] *Mir-*

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4. This is not to say that the protection of fourth amendment guarantees may never be relevant to determining admissibility. Of course, in a given case, a fourth amendment violation may be so inextricably interwoven with the defendant's waiver of his fifth amendment rights as to require suppression of any statement made. See eg. *Wong Sun* v. *United States*, 371 U.S. 471 (1963) where federal agents, after first seeking entrance by subterfuge, subsequently break down the door of Blackie Toy's laun-

anda v. *Arizona*, 384 U.S. 436, 439, 444. This right represents the ultimate recognition of our legal system as accusatorial rather than inquisitorial in nature. "Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured, and may not by coercion prove a charge against an accused out of his own mouth." *Malloy* v. *Hogan*, 378 U.S. 1, 8 (1964). Indeed, in *Miranda, supra* at 461, this Court focused most sharply on the importance of the privilege against self-incrimination in our constitutional scheme.

> "We have recently noted that the privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values. All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a fair state-individual balance, to require the government to shoulder the entire load, to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth In sum, the privilege is fulfilled only when the person is guaranteed the right to remain silent 'unless he chooses to speak in the unfettered exercise of his own will'." (384 U.S. at 460) (citations omitted).

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dry, pursue him into his living quarters in the rear and into the bedroom where his wife and child are sleeping and, with gun drawn, an agent places Toy under arrest, handcuffs him and begins to interrogate him concerning the narcotics traffic.

In this context, recognizing the paramount importance of the Fifth Amendment privilege, this Court in *Miranda* turned to a consideration of the effect of custodial police interrogation on effective individual utilization of the privilege and found the effect devasting.

Reviewing what the Court considered modern interrogation techniques, this Court found:

> From these representative samples of interrogation techniques, the setting prescribed by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must patiently maneuver himself or his quarry into a position from which the desired objective may be attained. When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.
>
> Even without employing brutality, the "third degree" or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals. (384 U.S. at 455) (footnotes omitted)

In assessing the effect of these procedures on the individual, the Court commented:

> It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To

be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of incommunicado interrogation is at odds with one of our Nation's most cherished principles — that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice. (384 U.S. at 457-58) (footnote omitted)

and

We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored. (384 U.S. at 467.)

This Court then announced specific procedural safeguards which it deemed effective to secure the privilege against self-incrimination during custodial interrogation.

Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions

or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.
(384 U.S. at 444-45)

and coupled these safeguards with the stringent remedy of prohibiting the use by the prosecution of any statement, either inculpatory or exculpatory, resulting from custodial interrogation of the defendant absent an affirmative showing of compliance with these procedures. (384 U.S. at 444).

The significance then of these procedures in securing the protection of the Fifth Amendment cannot be understated: "The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation." (384 U.S. at 476).

To adopt the position in the factual context of this case that the petitioner's first statement to the police officers following full compliance with these enunciated procedural safeguards must be excluded as a fruit of an illegal arrest is to flagrantly contradict the holding of *Miranda* and to reduce the procedures enunciated therein to nothing more than a meaningless "preliminary ritual".

Here, petitioner was arrested for the murder of Roger Corpus or "for investigation of the murder" by two police officers outside of his apartment at 7:45 P.M.[5] He was frisked, handcuffed and then asked if he was "Rich-

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5. Petitioner places heavy reliance on the fact that both officers had drawn their guns at the time of the arrest. This reliance is misplaced. Normal police procedure and indeed the dictates of common sense provide for this type of action in effectuating the arrest of a defendant for a murder committed with a gun.

ard Brown". He denied it. The officers then took Brown downstairs, through a lot to their squad car and drove him to the station. During the 15 to 20 minute ride to the station, petitioner sat alone in the rear seat, admitted being Richard Brown, and proceeded to conduct a casual conversation with the officers.[6] Upon arriving at the station, petitioner was taken directly to a second floor interrogation room with a window, four chairs, and a table. He was not handcuffed at this time since he himself indicated he was smoking throughout the evening. (A. 58). The officers left him alone for five to ten minutes while they picked up the case file and then returned.

Upon returning to the room, Detective Lenz gave the petitioner the warnings required by *Miranda* v. *Arizona*, *supra*, and specifically asked him if he wanted a lawyer present at that time, to which the petitioner responded that he did not. After the petitioner told Detective Lenz that he understood the warnings, the Detective then mentioned the incident in the pool room in which the petitioner had fired a revolver into the ceiling. The officers indicated that the bullet had been retrieved and sent to the Crime Lab for comparison with the bullets taken from the body of Roger Corpus. After stating, "Well, you know about that" or words to that effect, petitioner then said, "I want to tell you the truth. I want to get it off my chest. The best thing to do is to tell the truth." (A. 46). The petitioner then, at 8:45 P.M., one hour after his arrest, forty-five minutes after arriving at the station, and thirty to thirty-five minutes after being given his *Miranda* warnings, gave a two-page statement in the form of questions and answers

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6. The petitioner in his brief nowhere disputes the fact that he was not interrogated during this drive. See Petitioner's Brief, 23.

to the officers. This statement took approximately twenty-five minutes to complete. At the end of this time, petitioner agreed to help the officers look for Jimmy Cleggett, the man who Brown contended actually shot the victim.

Preparatory to leaving the station, petitioner told the officers that he wanted to "turn State's evidence" against Cleggett because Cleggett had actually done the shooting and Brown had had no prior idea that Cleggett would do that. (A. 26). The two detectives and petitioner left the station around 9:30 P.M. and drove to the area of the city Brown knew Cleggett to frequent. They then proceeded to drive around the area, with petitioner and the officers getting out of the car at several points so that Brown could look into various businesses in an effort to locate Cleggett. When these efforts proved unsuccessful, the party drove to the central police station in an unsuccessful effort to obtain a photograph of Cleggett. They left this building about 11:00 P.M. and returned to the same general area searching for Cleggett, visiting the same places of business as earlier. While driving, petitioner noticed Cleggett in a group of three pedestrians crossing in front of the police car at an intersection. The officers arrested Cleggett. All four then returned to the station, arriving about 12:15 A.M.

Petitioner was placed in the same interrogation room and given some coffee. He had a brief conversation with Detectives Nolan and Lenz, who were also engaged in questioning Cleggett in a separate room.

At 2:00 A.M. an Assistant State's Attorney arrived. After a brief conversation with Detectives Nolan and Lenz concerning the case background, the Assistant entered the interrogation room to speak with Brown. Upon entering the room, the Assistant told Brown he was entitled to have an attorney present. Brown responded that he knew

that; the officers had informed him of his constitutional rights. The Assistant then again gave Brown full *Miranda* warnings (A. 29), to which Brown responded that he did not want a lawyer; he wished to speak to the Assistant (A. 29). They had a brief conversation alone, at which time the Assistant told Brown that he would be charged with murder. (A. 32). Then a court reporter and Detective Nolan joined them and a written statement was taken from Brown which was later admitted at trial.

Prior to the taking of this second statement, the Assistant again informed Brown of his rights per *Miranda* (A. 30), to which Brown responded that he knew his rights and wanted to make the statement (A. 30). The statement took approximately one-half hour and, in substance, was virtually identical to the statement given to the detectives earlier.

Neither of these statements is challenged as involuntary under traditional concepts, i.e., as the product of brutality, extended questioning without food or sleep. And, indeed, neither is open to such challenge. The record clearly reflects the conditions under which petitioner was questioned; the officers provided him with coffee and water; the Assistant State's Attorney offered him food; and he had his own cigarettes. The actual periods of interrogation were quite short and immediately followed full *Miranda* warnings. Prior to the second statement, petitioner had been out of the police station on the street with the officers for almost three hours, during which period he was not interrogated at all.

Nor does petitioner seriously contend that either statement was taken in violation of *Miranda* v. *Arizona, supra.*[7]

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7. There is a passing reference to alleged trickery and deceit in securing the first statement in Petitioner's Brief at page 22-23, which he argues dissipated the effect of the *Miranda* warnings. The factual basis for this claim, as with so many others in this case, comes exclusively from petitioner's testimony on the motion to suppress, which was rejected by the trial court when he denied the motion. Both officers testified that they told petitioner of the pool room incident and that a bullet from the ceiling had been sent to the Crime Lab for comparison with the bullets from the victim's body. This information was all true. Both officers denied telling Brown that the bullets had been compared and in fact had been found to have been fired from the same gun. And neither officer testified that any mention at all was made to petitioner concerning fingerprints.

Rather, petitioner argues that his unlawful arrest effectively tainted his subsequent statement to the officers, and the second statement to the Assistant State's Attorney as the "fruit" of the first under *Wong Sun* v. *United States*, 371 U.S. 471 (1963).[8] That decision, however, does not mandate the conclusion suggested by petitioner.

The decision in *Wong Sun* was grounded primarily on the Fourth Amendment and the policies underlying that provision. In that context, it considered the admissibility of verbal statements by an accused which were the immediate and direct product of a Fourth Amendment violation. In that very limited context, this Court said:

> Thus, verbal evidence *which derives so immediately from an unlawful entry and an unauthorized arrest* as the officers' action in the present case is no less the "fruit" of official illegality than the more common tangible fruits of the unwarranted intrusion.
>
> (371 U.S. at 485) (footnote and citation omitted) (emphasis added)

8. This applicability of this decision was evidently extended to state court proceedings in *Traub* v. *Connecticut*, 374 U.S. 493 (1963).

The officers' actions in *Wong Sun*, the Court found were taken in violation of the Fourth Amendment. Acting solely on information received from a person whom they did not know to be a reliable informant and which did not lead them directly to James Wah Toy, the agents proceeded to Toy's laundry and, by subterfuge, unsuccesfully attempted to gain admittance at six o'clock in the morning. One agent then identified himself to Toy. Toy slammed the door and ran through the laundry to his living quarters and into the bedroom, where his wife and child were asleep. The agents broke down the door and ran after him into the bedroom. Agent Wong drew his gun, pulled Toy's hand from the nightstand drawer, placed him under arrest, handcuffed him, and one agent then accused him of selling narcotics to the informant. Toy's response to that accusation, made in the bedroom where his wife and child were sleeping, contemporaneously with the illegal entry and arrest were held to be so immediately derived from the illegal entry and arrest as to require suppression under the Fourth Amendment.

Then, in considering the admissibility of physical evidence received from a third person against Toy, which evidence was obtained as a direct result of Toy's suppressed bedroom declaration to the police, this Court stated:

> We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." (371 U.S. at 487-88) (citation omitted)

Utilizing this primary Fourth Amendment test, this Court then found the statement made by Wong Sun admissible in evidence since it was not the direct fruit of that arrest, i.e., "that the connection between the arrest and the statement had become so attenuated as to dissipate the taint". (371 U.S. at 491) (citation omitted).

Thus, *Wong Sun* treats a substantially different situation on its basic facts than that presented by this case. In that context, it fashions a rule which, to a limited extent, reaches verbal statements made by an accused. In determining the precise parameters of that limitation, one factor is paramount — *Wong Sun* was decided prior to *Miranda, supra.* Therein lies the fallacy in petitioner's argument here.

While the Court in *Wong Sun,* given the then-current status of the law, could, in referring to the Fourth Amendment exclusionary rule, say, "Nor do the policies underlying the exclusionary rule invite logical distinction between physical and verbal evidence" (371 U.S. at 486), that statement, in the narrow factual situation presented here, is no longer accurate, given *Miranda.*

There is a significant difference between items of physical evidence seized pursuant to an illegal arrest, where the accused has no control of the situation and no opportunity to make a free and rational choice affecting seizure and a verbal statement given, not at the time of arrest, but after transportation to the police station and immediate and full compliance with the procedural safeguards enunciated in *Miranda.* At this point, if *Miranda* means anything, the defendant stands in a substantially different posture than the defendant subjected to a search for physical evidence at the time of an illegal arrest. And if that defendant chooses, after his Fifth Amendment rights have been fully protected and voluntarily waived, to make

a statement, it can hardly be said that such a statement "has been come at by exploitation of that [initial] illegality." To hold otherwise is, in effect, to adopt the "but for" test rejected by this Court in *Wong Sun* — but for the illegal arrest, the defendant would not have confessed. Compare *Davis* v. *Mississippi*, 394 U.S. 721 (1969) (physical evidence).

Respondent thus suggests that the proper rule to be applied in this case is the one adopted by the Supreme Court of Illinois[9] — compliance with the dictates of *Miranda* v. *Arizona* attenuates *per se* any illegal arrest taint from an otherwise voluntary statement and here renders petitioner's statement to the police and consequently, his second statement to the Assistant State's Attorney, admissible in evidence.[10]

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9. Accord: *State* v. *LaRosa*, 313 A. 2d 375 (R.I. 1974); *People* v. *Tucker*, 314 N.E. 2d 276 (Ill. App. 1974); *State* v. *Dillard*, 260 So. 2d 675 (La. 1972); *People* v. *Trueblood*, 480 P. 2d 548 (Colo. 1971); *State* v. *Hooper*, 267 N.E. 2d 285 (Ohio 1971); *Grimes* v. *State*, 244 So. 2d 130 (Fla. App. 1971).

Contra: *People* v. *Johnson*, 450 P. 2d 865 (Cal. 1969); *Bynum* v. *State*, 490 P. 2d 531 (Okla. 1971). But see: *United States* v. *Villano*, 485 F. 2d 1333 (10th Cir. 1973); *United States* v. *Lepinski*, 460 F. 2d 234 (10th Cir. 1972); *People* v. *Robinson*, 358 N.Y. 2d 230 (1974); *Commonwealth* v. *Gilbert*, 314 N.E. 2d 111 (Mass. 1974); *State* v. *Loeffer*, 211 N.W. 2d 1 (Wisc. 1973); *Commonwealth* v. *Logan*, 296 A. 2d 755 (Pa. 1972), for cases placing exclusive reliance on traditional voluntariness and *Miranda* compliance. Cf. *Bretti* v. *Wainwright*, 439 F. 2d 1042 (5th Cir. 1971) (warnings prior to consent to search breaks taint of illegal arrest).

10. It should be emphasized that the issue presented here and thus, the suggested rule, are narrow in scope. Respondent does not suggest that such a *per se* attention rule necessarily applies to cases where circumstances attendant to an illegal arrest are particularly outrageous (which would be a factor relevant to the voluntariness determination) or to cases where the defendant is confronted during interrogation with evidence seized pursuant to the illegal arrest and a statement precipitated thereby. See, e.g., *McCloud* v. *Bounds*, 474 F. 2d 968 (4th Cir. 1973). We deal here only with a routine arrest, later found to be without probable cause, followed by a brief stationhouse interrogation conducted in compliance with *Miranda* and traditional Fifth Amendment dictates concerning voluntariness.

Such a rule gives due regard to the complex of values protected by the Fifth Amendment and the due process clause of the Fourteenth Amendment since it requires as a prerequisite a finding that the statement made was voluntary in the traditional sense. Additionally, it recognizes the importance of the procedural safeguards deemed by this Court to be required to overcome the coercive pressures of custodial police interrogation. And finally, it precludes an unwarranted extension of Fourth Amendment exclusionary rules to a situation where they properly have no application.[11]

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11. This rule is in no way intended nor does it, minimize the importance of an individual's Fourth Amendment rights. However, this Court, as well as most lower federal and state courts have consistently recognized that a Fourth Amendment violation does not render subsequent statements inadmissible *per se*. See, e.g., *Wong Sun* v. *United States, supra; Commonwealth ex rel. Craig* v. *Maroney*, 348 F. 2d 221 (3rd Cir. 1965); *Thompson* v. *Warden*, 413 F. 2d 454 (4th Cir. 1969); *United States* v. *Close*, 349 F. 2d 841 (4th Cir. 1965); *Edwards* v. *Swenson*, 454 F. 2d 1106 (8th Cir. 1972); *Leonard* v. *United States*, 391 F. 2d 537 (9th Cir. 1968); *United States* v. *Fallon*, 457 F. 2d 15 (10th Cir. 1972); *Butler* v. *State*, 296 So. 2d 673 (Miss. 1974); *Reed* v. *State*, 262 So. 2d 321 (Ala. 1972); *State* v.

II.

EXTENSION OF THE FOURTH AMENDMENT EXCLUSIONARY RULE TO CLAIMS WHICH ARE PROPERLY GOVERNED BY THE FIFTH AMENDMENT AND THE SAFEGUARDS ENUNCIATED THEREUNDER IS NOT ONLY UNWARRANTED, BUT UNDESIRABLE.

Since the petitioner here urges suppression of his statements pursuant to the Fourth Amendment, certain comments concerning the viability and efficacy of the exclusionary rule are required.

The rule, as enunciated in *Mapp* v. *Ohio*, 367 U.S. 643 (1961), requires the suppression of evidence seized in violation of the Fourth Amendment. This is true despite the fact that issues concerning the reasonableness of searches and seizures are among the most difficult in the law and are highly subject to inconsistent resolution. See, *Coolidge* v. *New Hampshire*, 403 U.S. 443, 483 (1971).

Fair, 467 S.W. 2d 938 (Mo. 1971); *People* v. *Briggs*, 36 A.D. 2d 790, 319 N.Y.S. 2d 374 (1971); *People* v. *Zakrzewski*, 36 A.D. 2d 646, 318 N.Y.S. 2d 94 (1971); *State* v. *Newell*, 462 S.W. 2d 794 (Mo. 1971); *State* v. *Funchess*, 179 S.E. 2d 25 (S.C. 1971); *Commonwealth* v. *Daniels*, 317 A. 2d 237 (Pa. 1974); *Commonwealth* v. *Boyer*, 297 A. 2d 493 (Pa. 1972); *Commonwealth* v. *Bishop*, 228 A. 2d 661 (Pa. 1967). Contra: *United States* v. *Burhannon*, 388 F. 2d 961 (7th Cir. 1968); *People* v. *Young*, 35 A.D. 1061, 316 N.Y.S. 2d 379 (1970); *People* v. *Moreno*, 491 P. 2d 575 (Colo. 1971).

Absent such a *per se* rule of exclusion, due regard for the *Miranda* rule requires the conclusion suggested by respondent here at no sacrifice to individual rights, since it is highly unlikely that police officers would intentionally engage in practices violative of the Fourth Amendment while scrupulously complying with *Miranda*.

Its stated purpose is to deter illegal police conduct: *Linkletter* v. *Walker*, 381 U.S. 618 (1965). Yet, there is no evidence that the rule in fact fulfills this purpose. See, Oaks, "Studying the Exclusionary Rule in Search and Seizure," 37 U. Chi. L. Rev. 665 (1970). Indeed, this Court has recognized the inability of the rule to deter in certain contents. *Terry* v. *Ohio*, 392 U.S. 1, 12-15 (1968). And see, Horowitz, "Excluding the Exclusionary Rule," 47 L. A. Bar Bull., 91, 92 (1972); Barrett, "Exclusion of Evidence Obtained by Illegal Searches," 43 Calif. L. Rev. 565, 592-93 (1955). And in recent years, the validity of the rule has been the subject of increasing concern. See, *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 411 (1971) (Burger, C. J., dissenting); *Coolidge* v. *New Hampshire*, 403 U.S. 443, 490, 493, 510 (1971) (Harlan, J., concurring) (Black and Blackmun, J. J., concurring and dissenting).

On policy grounds, the rule is inappropriate. See, e.g., Burger, "Who Will Watch the Watchman," 14 Am. U. L. Rev. 1 (1964). In practical terms, it benefits only the guilty, since an innocent man whose rights are violated must sue civilly for damages—a time-consuming and ineffective remedy. In application, it punishes society as a whole rather than the offending officer through the diversion of fundamental concerns of guilt or innocence and the suppression of evidence of unquestioned reliability. And it does this with no consideration given to whether the alleged violation was intentional and flagrant or merely a technical or good faith error [See, Friendly, "The Bill of Rights as a Code of Criminal Procedure", 53 Calif. L. Rev. 929, 952 (1965)] and with no concern for the severity of the crime involved. See, *Brinegar* v. *United States*, 338 U.S. 160, 183 (Jackson, J., dissenting); *People* v. *Defore*, 213 App. Div. 643, 652, 211 N.Y.S., 134, 142 (1925).

To extend the exclusionary rule beyond legitimate Fourth Amendment claims when the rule in its present context is validly subject to such severe criticisms and admittedly fails to fulfill its stated purpose,[12] is, at the very least, ill advised. This is especially true where, as here, the alleged violation more properly must be considered in light of the Fifth Amendment and the clearly enunciated procedural safeguards effective to secure the protections of that provision.

CONCLUSION

For the aforementioned reasons, the People of the State of Illinois respectfully request this Court to affirm the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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12. To argue as petitioner does here that the exclusionary rule is a proper sanction for Fourth Amendment violations because other available sanctions are ineffective, begs the question. If the rule is ineffective in accomplishing its stated purpose, its current applicability renders it no more viable in any real sense than the remedies which petitioner criticizes.

Supreme Court, U. S.
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No. 73-6650

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RICHARD BROWN, PETITIONER

v.

STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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INTEREST OF THE UNITED STATES

The question presented by petitioner is whether *Miranda* warnings so attenuate the "taint" of an unconstitutional arrest that a statement by one who continues to be in unconstitutional custody is admissible. The United States has a direct interest in the standard to be used in determining whether a statement voluntarily made must be suppressed as the "fruit" of an unconstitutional arrest. Law enforcement officers employed by agencies of the United States, including the Metropolitan Police Department of the District of Columbia, frequently encounter analogous situations. Moreover, an Act of Congress, 18 U.S. 3501, expressly declares that all statements voluntarily made shall be admissible in evidence; the decision in this case may affect the validity of that statute. Finally, to the extent this case involves the standards

to be used in determining what is a "fruit" of an unlawful arrest, it will have a substantial impact on trials of federal criminal charges.

STATEMENT

On May 13, 1968, petitioner was arrested in connection with the murder of Roger Corpus (App. 16, 88).[1] Without an arrest warrant (App. 83), two Chicago police officers entered petitioner's apartment at approximately five o'clock that afternoon (App. 77). The officers, one stationed inside the apartment and one remaining outside, awaited petitioner's return. When he arrived, at approximately 7:45 p.m., he was arrested (App. 14), handcuffed (App. 93), and taken to the central interrogation room of a police station (App. 7).

After petitioner was placed in this room he was given *Miranda* warnings (App. 7, 19, 37) and told that the officers were aware of an incident a few weeks earlier in which petitioner discharged a weapon into the ceiling of a pool hall (App. 37). Petitioner was then asked whether he was willing to tell the officers what he knew about the death of Corpus. Petitioner thereupon volunteered a statement, claiming that the murder had been committed by Jimmy Claggett, with a gun petitioner had sold to Claggett, and that he had been present in Corpus's apartment when the murder had been committed (App. 89-92). This statement was given within an hour after the arrest (App. 8). Petitioner then helped the officers apprehend Claggett (App. 9-10).

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[1]The version of events given here is substantially that recounted by the two officers who arrested petitioner. Petitioner's testimony at the suppression hearing (App. 51-65) contradicts many of these details. Although the trial court did not make findings of fact or rulings on credibility, it implicitly rejected at least some of petitioner's testimony when it denied the motion to suppress (App. 65).

After the arrest of Claggett petitioner was returned to the interrogation room. At about 2:00 a.m. on May 14, an Assistant State's Attorney arrived, again gave *Miranda* warnings to petitioner, and took a second statement similar to but more elaborate than the first (App. 95-105). This statement was transcribed by a court reporter, but petitioner declined to sign it (App. 57). After he had given this second statement, petitioner was "booked" for the murder of Roger Corpus; later in the morning he was arraigned before a local magistrate (App. 47, 49, 94).

Petitioner filed a motion to suppress both statements on the grounds that they were involuntary and that his arrest was unconstitutional (App. 3). After a suppression hearing (App. 5-65) the trial court denied the motion without opinion (App. 65).

The Supreme Court of Illinois affirmed (App. 107-110). That court concluded that the evidence in the record was insufficient to show probable cause for petitioner's arrest and that the arrest was, therefore, unlawful (App. 108). However, the court held that the statements were admissible because "the giving of the *Miranda* warnings * * * served to break the causal connection between the illegal arrest and the giving of the statements, and that [petitioner's] act in making the statements was 'sufficiently an act of free will to purge the primary taint of the unlawful invasion.' *(Wong Sun* v. *United States,* 371 U.S. 471, at 486.)" (App. 109-110).

DISCUSSION

Petitioner requests this Court to address the important question of the circumstances in which voluntary statements, given in response to custodial interrogation following an unconstitutional arrest, are sufficiently purged of the taint of the illegal arrest that they may be admit-

ted in evidence (Pet. Br. 9-24). We submit that the record in this case is inadequate to support that important inquiry, and that this case should be remanded to the Illinois courts so that material facts surrounding petitioner's arrest and statements may be developed, as was done in *Morales* v. *New York*, 396 U.S. 102.

There are a variety of alternative "attenuation" rules among which this Court might choose consistently with the decision in *Wong Sun* v. *United States*, 371 U.S. 471. At one end of the spectrum of arguable positions, the voluntariness of a statement would be irrelevant if the unconstitutional arrest were a "but for" cause of the statement.[2] At the other end, *Miranda* warnings would by themselves break the causal chain, so that any subsequent statement, even one clearly induced by the continuing effects of unconstitutional custody, would be admissible so long as it is otherwise voluntary (in the sense that it has not been coerced in violation of the Fifth Amendment or the Due Process Clause of the Fourteenth Amendment).[3]

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[2]To the best of our knowledge, no court has adopted this view. However, at least three courts of appeals, without fully delineating a rule, have without more held that statements given by one in unconstitutional custody are not admissible. *United States* v. *Strickler*, 490 F.2d 378 (C.A. 9); *United States* v. *Burhannon*, 388 F.2d 961, 964 (C.A. 7); *Gatlin* v. *United States*, 326 F.2d 666 (C.A.D.C.).

Similarly, under the *McNabb-Mallory* line of cases based on Fed. R. Crim. P. 5(a), suppression of a statement was "automatic" once the court ascertained that continuing custody of a suspect who had not been arraigned was illegal. However, that line of cases has been affected by 18 U.S.C. 3501; see *Government of Virgin Islands* v. *Gereau*, 502 F.2d 914 (C.A. 3), petition for a writ of certiorari pending, No. 74-5423. It also may be questioned whether the automatic exclusion rule of these pre-*Miranda* cases was appropriate in circumstances where a voluntary confession had been given after full *Miranda* warnings. See, *e.g.*, *Pettyjohn* v. *United States*, 419 F.2d 651 (C.A.D.C.), certiorari denied, 397 U.S. 1058.

[3]This is apparently the view of the Supreme Court of Illinois. Our research has not disclosed any other decisions adopting this position.

Numerous intermediate rules are feasible. The Court could conclude that the "voluntariness" *vel non* of a statement is the controlling factor: if an individual sincerely desires to tell the truth, that frame of mind makes his statement an "act of free will [sufficient] to purge the primary taint of the unlawful invasion." *Wong Sun, supra,* 371 U.S. at 486.[4] Alternatively, the Court could conclude that a suppression hearing must consider the totality of the circumstances before deciding whether a "taint" had been "purged."[5] Finally, if the test were directed to ascertaining those cases in which the exclusionary rule could be a realistic deterrent, it would be necessary to examine whether the initial illegality of the arrest was the product of deliberate and knowing misconduct and whether that illegality had been "exploited" for the purpose of producing the very "fruit" the prosecution seeks to introduce in evidence.[6]

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[4]Several of the lower federal courts that have considered this question have used the "voluntariness" of the statement as the primary focus of inquiry. See, *e.g.*, *United States* v. *Fallon*, 457 F.2d 15 (C.A. 10); *United States* v. *Close*, 349 F.2d 841, 851 (C.A. 4) (*dictum*). Cf. 18 U.S.C. 3501.

[5]The totality of the circumstances would include whether the illegality of the arrest is "technical" or substantial, how much time elapsed after the initial taint before a statement was given, whether there were any breaks in the chain of events, such as a release from custody or consultation with an attorney, and whether the eventual voluntary statement is a response to continued custody or is instead an earnest attempt to assuage a conscience. See, *e.g.*, *United States* v. *Owen*, 492 F.2d 1100 (C.A. 5) (confession 4 days after arrest; return to custody voluntary; admissible); *Hale* v. *Henderson*, 485 F.2d 266 (C.A. 6) (confession 42 hours after arrest; no break in custody and little break in interrogation; suppressed); *Leonard* v. *United States*, 391 F.2d 537 (C.A. 9) (confession "substantial" time after arrest; accused had been arraigned; admissible).

[6]See, *e.g.*, *United States ex rel. Gockley* v. *Myers*, 450 F.2d 232 (C.A. 3); *United States* v. *Kilgen*, 445 F. 2d 287 (C.A. 5) (by implication); *United States* v. *Edmons*, 432 F. 2d 577 (C.A. 2).

The proceedings below were directed almost entirely to determining whether the statements were "voluntary" (Tr. 87-100), and the trial court failed to make any findings of fact or resolve the conflicting claims of petitioner and the State (App. 65). Therefore, this record does not contain enough information about potentially pertinent aspects of petitioner's arrest and statements to enable this Court to determine what effect the differences among the panoply of potential rules would have upon this case, and which rule, if any, is necessary (as opposed to sufficient) to decide this case.

1. It is not clear from the record why the officers went to petitioner's apartment, broke in, and waited for three hours until petitioner's return. If the arrest was merely for "investigation," and the police had no substantial basis for suspecting that petitioner was involved in the murder, the procedures used seem unusual: it seems unlikely that the police would in such circumstances have had sufficient reason to suppose (as their actions indicate they did) that petitioner would decline an ordinary request for an interview; similarly, it seems improbable that the police would have subjected themselves to such extensive inconvenience in order to secure an opportunity to question petitioner in the absence of some meaningful basis for suspicion.

The State argued on appeal that the officers possessed probable cause to arrest petitioner, and supported that argument with the testimony of Mrs. DeLoach, who stated that she had seen petitioner, whom she recognized, enter the apartment of the deceased shortly before his death (App. 71-73). The Supreme Court of Illinois rejected this argument, stating that there is no evidence in the record that this information was conveyed to the officers who arrested petitioner (App. 108). However, because the circumstances leading to petitioner's arrest were not

at issue either in the suppression hearing or at trial, Mrs. DeLoach was never asked whether and when she had conveyed the information, and the officers were not asked whether and when they had received it. Nor were the officers asked what other information was in their possession that pointed to petitioner's complicity in the crime. It may be, on complete examination, that there was probable cause for petitioner's arrest.[7]

If Mrs. DeLoach did not supply the officers with probable cause to arrest petitioner, why did they do so? One brother of the deceased gave petitioner's name to the officers on May 7, 1968, as a "friend" of the deceased (App. 73) but did not provide additional information (App. 74). One of the arresting officers stated that after May 6 he "had further conversation with members of the Corpus family. As a result of these conversations we were supplied with the name of [petitioner] * * * " (App. 76). This same officer testified that he told petitioner that he had been arrested because the officers had "some evidence" (App. 78) implicating him in the crime. Because these responses were not explained, there is no adequate picture of the reasons for petitioner's arrest.

Petitioner himself testified that an officer told him that a "brother [of the deceased] gives him my name along with a list of other names. This is how they come by me. Then he said after his investigation turns up the

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[7]Similarly, after the remand in *Morales* the New York courts determined that there was probable cause for his arrest. *New York Law Journal*, May 21, 1971, p. 18, col. 2f (N.Y. Sup. Ct.). Of course, even if there were probable cause, it would be open to petitioner to assert that the arrest was improper because made in his private residence without a warrant. We do not address that issue. However, the impropriety, if any, in failing to obtain a warrant to make a probable cause arrest would be a very different sort of primary taint from the taint introduced by an arrest utterly without probable cause.

pool room incident, he said this is when he decided to come pick me up" (App. 53). The trial court did not state whether this version of events is credible; in any event, the State stipulated that the bullet fired in the pool room did not match the bullets that killed the deceased (App. 105), so that the "pool room incident" would not, as far as appears in the record, have connected petitioner to the crime. The "pool room incident" could, however, have provided probable cause to arrest petitioner for any crimes he may have committed there.

2. The officers never testified that they viewed the pool room incident as probable cause to arrest petitioner. Instead, they stated that petitioner was arrested "for investigation" (App. 35, 43, 78, 81, 83, 88, 89); for "questioning" (App. 94); or for "murder" (App. 16). The record does not contain any clear indication whether the officers arrested petitioner with the intention of prosecuting him for murder or whether they intended only to question him in the hope of producing the very "fruit" petitioner seeks to suppress. The statements by the officers characterizing the arrest as "for questioning" or "for murder" are inconsistent, and the trier of fact did not resolve the difference. Because the focus of the suppression hearing was virtually exclusively confined to the voluntariness of petitioner's post-arrest statements, questions that might have clarified the purpose of and justification for the arrest were objected to by counsel for the State, and the objections were sustained (App. 14-15, 81). The failure of the arresting officers to "book" petitioner for any crime until after he had made a statement (App. 49) suggests that the arrest was for questioning; on the other hand, petitioner testified that he was induced to confess when the officers told him that they had solid evidence implicating him in the murder (App. 54). If such evidence then existed, or if the officers reasonably believed it

existed, the arrest probably was made with the intention of prosecuting. It is important that these differences be resolved.

3. There are conflicting stories in the record concerning the reason petitioner made his statements. The officers testified that petitioner made the statements out of a sincere desire to cleanse his soul and end the necessity to conceal his involvement in the crime (App. 46, 89). If this is correct, then under most of the alternative rules for attenuation the purely voluntary desire to come forward with the truth would be sufficient to purge any taint from an illegal arrest. But petitioner testified that he gave his statement in an attempt to free himself of the unconstitutional custody that had been imposed on him (App. 54-55) and because the officers (falsely) had told him that, if he cooperated, he would not be prosecuted. Such a confession might not even be voluntary, let alone an exertion of free will sufficient to purge the primary taint of an arrest intended to induce petitioner to make a statement.

We submit that it is necessary here, as it was in *Morales* v. *New York, supra,* to resolve these evidentiary conflicts and to fill in the deficiencies in the record before this Court undertakes to essay a resolution to the difficult legal problem presented by this case.

CONCLUSION

For the foregoing reasons this Court should vacate the judgment below and remand this case for additional proceedings.

Respectfully submitted.

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